

# **MEMORANDUM OF AGREEMENT**

**Between**

**The City of San José**

**And**

**The International Union of  
Operating Engineers, Local No. 3  
(OE #3)**



**April 17, 2004 - April 14, 2006**

**Operating Engineers', Local #3**  
**Memorandum Of Agreement**  
**April 17, 2004 – April 14, 2006**

**TABLE OF CONTENTS**

Article 1	Period Of Memorandum Of Agreement.....	3
Article 2	Recognition .....	3
Article 3	Purpose .....	3
Article 4	Definitions.....	4
Article 5	Wages and Special Pay .....	4
	5.1 Salary Range .....	4
	5.2 Uniform Allowance.....	4
	5.3 Shift Differential .....	5
	5.4 Working in a Higher Classification .....	5
	5.5 Health Insurance .....	6
	5.6 Dental Insurance .....	6
	5.7 Payment-In-Lieu Of Health and/or Dental Insurance Program .....	6
	5.8 Supplemental Benefits.....	7
	5.9 Call Back Pay .....	7
	5.10 Standby Pay .....	8
	5.11 Jury Duty.....	8
	5.12 Witness Leave .....	9
	5.13 Career Development.....	10
	5.14 Use Of Private Automobile - Mileage Reimbursement .....	10
	5.15 Protective Clothing.....	10
	5.16 Bilingual Pay .....	12
	5.17 Life Insurance .....	12
	5.18 Meal Allowance.....	12
	5.19 Eligibility for Benefits .....	12
	5.20 Brake, Lamp and Smog Certifications Incentive.....	13
	5.21 Class A/B Licenses .....	13
Article 6	Hours of Work and Overtime.....	13
Article 7	Dues Deduction.....	16
Article 8	Management Rights .....	16
Article 9	Full Understanding, Modification and Waiver .....	17
Article 10	Full Faith and Credit .....	17
Article 11	Safety .....	18

Article 12	Grievance Procedure .....	19
Article 13	Leaves of Absence .....	23
Article 14	Layoff.....	24
Article 15	Bulletin Boards .....	26
Article 16	Holidays.....	27
Article 17	Vacations and Personal Leave.....	28
Article 18	Sick Leave .....	30
Article 19	Disability Leave .....	33
Article 20	Agency Fee .....	35
Article 21	Bereavement Leave .....	38
Article 22	Supplemental Benefits For Part-Time Employees.....	38
Article 23	Authorized Representatives .....	41
Article 24	Separability.....	42
Article 25	Probationary Period Extension .....	42
Article 26	Retirement.....	42
Article 27	Performance Evaluation .....	42
Article 28	Disciplinary Step Reduction .....	43
Article 29	Employee Assistance Referral .....	44
Article 30	Substance Abuse Treatment Program .....	44
Article 31	Alternative Work Schedule .....	44
Article 32	Labor Management Committees .....	46
Article 33	Supervision of Inmates .....	46
Article 34	Catastrophic Illness or Injury Time Donation Program .....	47
Article 35	New Employee Orientation .....	49
	Signature Page .....	50

## EXHIBITS

Exhibit I	2001-04 Salary Ranges .....	51
Exhibit II	Substance Abuse Program .....	53

**MEMORANDUM OF AGREEMENT**  
**City Of San José**  
**And**  
**The International Union Of Operating Engineers, Local No. 3**  
**April 17, 2004 – April 14, 2006**

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, this 17th day of April, 2004, by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the International Union of Operating Engineers, Local No. 3, hereinafter referred to as the "Union" or "OE#3."

**ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT**

This Agreement shall become effective April 17, 2004, except where otherwise provided, and shall remain in effect through April 14, 2006. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, it is agreed that the Union shall exert every reasonable effort to submit any proposed changes or additions to this Agreement on or before December 14, 2005. The City agrees to begin the meet and confer process as soon thereafter as is reasonably possible.

Copies of this agreement, as originally executed, shall be printed in a number sufficient to provide one copy for each employee represented by the Union, and distributed as soon as practical.

**ARTICLE 2 RECOGNITION**

Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the International Union of Operating Engineers, Local No. 3, hereinafter referred to as the Union, is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions therefrom shall constitute appropriate units.

**ARTICLE 3 PURPOSE**

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein, to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the International Union of Operating Engineers, Local No. 3.

## ARTICLE 4 DEFINITIONS

For the purposes of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2 - Definitions, of Resolution No. 39367 of the Council of the City of San Jose and in Part 2 - Definitions, of Chapter 3.04 of Title III, of the San Jose Municipal Code unless it is apparent from the context that a different meaning is intended.

## ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Salary Range. Salary Ranges for employees holding classifications assigned to Representation Unit 6 shall be maintained for the first year of this agreement and adjusted 1.5% effective April 10, 2005. Adjusted salary ranges are set forth in Exhibit I.

5.2 Uniform Allowance.

5.2.1 An annual Uniform Allowance not to exceed \$600.00 shall accrue for eligible employees regularly assigned to the classifications listed below, provided that such eligible employees are required, in the performance of the assigned duties of such classifications, to wear an approved uniform.

2423	Park Ranger	2424	Park Ranger (Part-Time)
2451	Parking Control Officer	2452	Parking Control Officer (Part-Time)
2453	Senior Parking Control Officer		

5.2.2 In the event an eligible full-time employee assigned to a 40-hour week is paid for less than 2,000 hours during the 26 full pay periods immediately preceding December 31st, such employee shall be paid that proportion of the allowance which the total number of hours for which the employee was paid in the above period bears to 2,000.

5.2.3 Eligible part-time employees in the above listed classifications shall receive that proportion of the allowance which the total number of hours paid during the 26 full pay periods immediately preceding December 31st bears to 2,000.

5.2.4 The Uniform Allowance referred to herein shall be paid as soon after December 31st of each calendar year as practical.

5.2.5 Safety Equipment. Employees in the classification of Park Ranger (2423 and 2424) who are required while on duty, to wear the following, shall be provided each of said items: utility belt, belt case, flashlight, handcuffs, handcuff case, protective vest, rainwear including raincoat, rain pants, and hat cover. Such items shall remain the property of the City and shall be returned to the City upon the employee's separation from employment. Employees who have completed certified training to carry a collapsible "bite stick" shall be authorized to carry such equipment. Employees shall purchase the collapsible "bite stick" and be responsible for the cost of the training if the training is otherwise not available at no additional cost to the City.

5.3 Shift Differential. Eligible employees, as defined herein, shall be paid a shift differential of \$1.40 per hour for each eligible hour, as defined herein, to the nearest half hour, of work performed.

5.3.1 Eligibility and Application. To be eligible for payment of shift differential, an employee must be assigned to an on-going, regular shift of eight (8) hours or more which is regularly scheduled to start between the hours of:

- a) 2:00 p.m. and 11:59 p.m. (i.e. swing shift), or
- b) 12:00 midnight and 5:59 a.m. (i.e. graveyard shift)

If the employee's shift starts within the time period defined above and the employee works a minimum of two (2) hours within that time period, the employee shall be compensated with shift differential for the entire shift.

If the employee's shift starts within the time period defined above and the employee works less than two (2) hours within that time period, the employee shall be compensated with shift differential for the number of hours of work actually performed within that time period.

5.3.2 Except as otherwise required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.

5.4 Working in a Higher Classification.

5.4.1 Upon specific written assignment by the Department Director or designee, an employee who has completed his/her initial probationary period with the City may be required to perform the duties of a higher classification. Such assignments shall be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or a vacant position. Assignments to a higher classification due to a vacancy shall not exceed six (6) months. Once an employee reaches the six (6) month maximum in a specific higher class assignment due to a vacancy, the employee shall not be eligible to serve in the same higher class assignment for at least six (6) months.

5.4.2 Employees specifically assigned in writing to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate/step higher in the salary range schedule than the rate received by the employee in the employee's present class provided, however, that the employee shall not receive any compensation unless the assignment is for the majority (more than 50%) of the scheduled shift or longer.

If the assignment is for a majority of the shift and the employee completes the assignment, they shall be compensated for the entire shift provided that the employee works the remainder of the shift and does not take paid or unpaid leave. If, as provided above, the employee is eligible for compensation at the higher rate, and following the higher class assignment, the employee takes paid or unpaid leave, the employee shall only be compensated at the higher rate for hours actually worked in the higher class.

## 5.5 Health Insurance.

5.5.1 The City will pay 90% of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay 10% of the premium for the lowest priced plan up to a maximum of \$25.00 per month. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

Effective at the beginning of pay period one (1) of payroll calendar year 2006, the City will pay 90% of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay 10% of the premium for the lowest priced plan up to a maximum of \$50.00 per month.. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

5.5.2 The Benefits Review Forum representatives may evaluate and recommend appropriate changes in the Health Insurance, Dental, and Orthodontic coverage, subject to ratification by the employee organization.

## 5.6 Dental Insurance. The City will provide dental coverage for eligible full time employees and their dependents in accordance with one of the two available plans.

Effective at the beginning of pay period one (1) of payroll calendar year 2006, the City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay 95% of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay 5% of the full premium cost for the selected plan. As of the date of this Agreement the plans include an indemnity plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Employee Services Department.

5.6.1 Each eligible, full-time employee and dependents shall receive a lifetime maximum of \$2,000 Orthodontia coverage in the Delta Dental Plan.

5.6.2 Each active, eligible, full-time employee and eligible dependents that are enrolled in the Delta Dental Plan shall receive annual maximum coverage of \$1500.00.

## 5.7 Payment-in-lieu of Health and/or Dental Insurance Program. The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

5.7.1 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive 50% of the City's contribution toward the employee's health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution.

5.7.2 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and

have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Employee Services. Alternate coverage must be acceptable by the City.

- 5.7.3 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first 30 days of employment, during the annual open enrollment period or within 30 days of a qualifying event (defined in the Employee Services Benefits Handbook as a change in marital, dependent or work status of the employee or the employee's spouse) occurring anytime during the year. Employees who miss the 30-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.
- 5.7.4 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced workweek, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.
- 5.7.5 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.
- 5.7.5.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.
- 5.7.5.2 Dental Insurance. Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two (2) dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.
- 5.8 Supplemental Benefits. The City shall pay to International Union of Operating Engineers, Local No. 3 for each full-time employee holding a position in a classification designated in Representation Unit 6 and participating in the supplemental plan the sum of \$11.50 per month for vision care benefits coverage for such employees and their dependents, and burial coverage for employees. Such payments shall be made for each calendar month based on employees holding such positions and participating in the supplemental plan during the last full pay period preceding the first of the month for which payment is made.
- 5.9 Call Back Pay. Any employee who is called back to work after working their scheduled shift and departing from their place of employment shall be credited with overtime for

the time worked, or for three (3) hours at the appropriate rate, whichever is greater. An employee called back to duty shall be entitled to the three-hour minimum call back compensation only once per eight-hour shift. For subsequent call backs during the same shift, the employee shall be credited with the time worked or for one-half hour at the appropriate rate, whichever is greater.

5.9.1 If an employee completes a 40-hour workweek, the appropriate rate for call back pay is 1.5. If the employee does not complete a 40-hour workweek, the appropriate rate is 1.0. All paid absences shall be deemed time worked for purposes of determining if the employee completed his/her 40-hour workweek.

5.10 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate for each eight hour shift they perform standby duty. In the event that the employee is called back to work, they shall be entitled to the compensation provided by Section 5.10 above, in addition to the one-hour of standby compensation for that eight-hour shift.

5.10.1 If an employee completes a 40-hour workweek, the appropriate rate for standby pay is 1.5. If the employee does not complete a 40-hour workweek, the appropriate rate is 1.0.

5.11 Jury Duty. Each full-time employee who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America, shall receive the regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify the immediate supervisor. Eligibility for jury compensation shall be subject to the following:

5.11.1 Employees assigned to a day shift. In those cases in which the employee is released by the court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of their shift. For this the employee receives their regular base pay for that shift, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.

5.11.1.1 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.

5.11.1.2 In those cases in which the employee is not released by the court until after 1:00 p.m. the employee need not return to work. The employee receives their regular base pay for that shift, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.

5.11.2 Employees assigned to a swing or graveyard shift who are called for jury selection. Employees assigned to a swing or graveyard shift, as defined in Section 5.3 of this Article, if released by the court at 1:00 p.m. or earlier shall report for duty at the scheduled beginning of the employee's assigned shift except for Water Pollution Control Plant (WPCP) employees assigned to 12-hour shifts. WPCP employees assigned to a 12-hour swing or graveyard shift who are released by the court at 1:00 p.m. or earlier shall report to work no later than 10:00 p.m. instead of at the scheduled beginning of the employee's assigned shift.

- 5.11.2.1 In the event the employee is required to report for jury duty the following day, the employee will be excused without loss of compensation two (2) hours before the end of the scheduled shift but no earlier than 10:00 p.m. for employees assigned to a swing shift or 6:00 a.m. for employees assigned to a graveyard shift.
- 5.11.2.2 Employees assigned to a swing or graveyard shift who are not released by the court at 1:00 p.m. or earlier shall not be required to report for duty on the scheduled shift on that day and shall receive a full day's pay, less jury fee.
- 5.11.2.3 In the event an employee is released by the court at 1:00 p.m. or earlier and fails to report for duty as required above, such employee shall not receive any compensation from the City for that shift but may retain any jury fee received from the court.
- 5.11.3 Employees assigned to a swing or graveyard shift who are selected to sit on a jury. An employee who is assigned to a swing or graveyard shift who is impaneled on a jury shall be temporarily assigned to a day shift of 8:00 a.m. to 5:00 p.m., Monday through Friday. This temporary schedule change shall not apply to employees who are called to jury selection, unless they are impaneled on a jury.
  - 5.11.3.1 The temporary schedule change shall begin on the first day of the workweek following jury impanelment. Until the temporary shift change takes effect, the provisions applicable to jury selection for employees on alternate shifts shall apply. When an employee is temporarily assigned to a day shift of 8:00 a.m. to 5:00 p.m. Monday through Friday, the provisions applicable to jury duty for employees on regular Monday through Friday day shifts shall apply.
  - 5.11.3.2 Upon completion of jury duty, the employee will resume their normal work schedule on the first day of the workweek following release from jury duty.

## 5.12 Witness Leave.

- 5.12.1 Each employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of their employment with the City, in any case or proceeding in any Court of this State or of the United States of America, shall receive their regular salary during the time of service as a witness under subpoena, less any and all witness fees which may be received by the employee. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City. An employee subpoenaed as a witness shall not in and of itself constitute being a party to the action.
- 5.12.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with their employment, shall be credited with overtime for the time spent in court, or for two hours, whichever is greater, less any and all witness fees which may be received by the employee. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City. An employee subpoenaed as a witness shall not in and of itself constitute being a party to the action.

- 5.12.3 Upon service of subpoena, an employee shall immediately advise their Department Director or designee of the time when the employee is required to appear in Court.
- 5.13 Career Development. The City is committed to assisting employees with career growth and development and agrees to the following:
- 5.13.1 Tuition Reimbursement Program. The City will reimburse each employee 100% of expenses incurred, up to \$500.00 per fiscal year, for registration, tuition and textbooks for courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service. Section 5.01 of the City Policy Manual outlines additional details of the program. This amount may be used for workshops, membership dues in professional associations, professional licenses, and professional certificates as approved by the Department Director or designee.
- 5.13.2 Brake, Lamp and Smog Licenses. The City encourages all employees in the Mechanic series to receive Brake, Lamp and Smog licenses. If an employee successfully passes an exam and receives any of the above listed licenses, the City agrees to reimburse the employee for the cost of the exam. The City also agrees to provide reasonable in-house training and/or mentoring for employees who are interested in receiving these licenses.
- 5.13.3. Employability. The City strives to maximize the productivity and full potential of all City employees by providing career development opportunities within the organization. The City will continue these opportunities as well as endeavor to retrain and in-place employees in the event of job changes as a result of streamlining work processes, advances in technology and/or the elimination of current work assignments.
- 5.14 Use of Private Automobile- Mileage Reimbursement. Each employee of the City who is authorized by the City Manager, or designee, to use their private automobile in the performance of the duties of their position, shall be entitled to receive and shall be paid as a travel allowance for such use of the employee's private automobile a mileage reimbursement rate consistent with the City's rate.
- 5.15 Protective Clothing.
- 5.15.1 The City agrees to provide a voucher for the purchase of protective footwear for up to \$140 for full time employees when it is determined by the Director of Employee Services, or designee, that protective footwear is required. A voucher will also be provided to appropriate classifications in the Tree Crew to purchase special tree climbing boots. Classifications, boot type and cost of Tree Crew boots will be determined by the Director of the Department of Transportation, or designee. The City will replace protective footwear and Tree Crew boots on an annual basis, except for the hot gang boots which will be replaced semi-annually. An individual may select an approved style that is more expensive than the City maximum by paying the difference. Employees shall be allowed to obtain a voucher from any vendor(s) authorized by the City.

5.15.2 The City shall provide laundered painter coveralls for full-time employees holding positions in the classifications listed below:

3121	Apprentice Painter I	3122	Apprentice Painter II
3123	Painter	3124	Painter, W.P.C.P.
3125	Sign Painter	3126	Senior Painter

5.15.3 Such coveralls shall be and shall remain the property of the City of San Jose.

5.15.4 The City shall provide suitable protective rain gear for employees holding positions in classifications listed below when such employees are required to work in the rain.

3111 Maintenance Assistant	3112 Maint. Assistant (part-time)
3113 Maintenance Worker I	3114 Maintenance Worker II
3115 Sr. Maintenance Worker	3120 Sr. Pump Maint. Worker
3241 Airport Maintenance Worker I	3242 Airport Maint. Worker II
3341 Equipment Operator	3343 Heavy Equipment Operator
3344 Heavy Equip. Oper Trainee	3410 Groundskeeper
3411 Groundswoker	3412 Park Maint. Repair Worker I
3413 Park Maint. Repair Worker II	3414 Gardener
3415 Athletic Stadium Grndskpr	2415 Parking Control Officer
2423 Park Ranger	2452 Parking Control Officer PT
2424 Park Ranger PT	2453 Sr. Parking Control Officer
2423 Park Ranger Trainee PT	3106 Maintenance Trainee
3107 Maintenance Trainee PT	3409 Groundskeeper PT
3641 Assist Hvy Dsl Equip. Operator Mechanic	3321 Apprentice Mechanic
3642 Heavy Dsl Equip. Operator Mechanic	3323 Mechanic
3643 Sr. Hvy Dsl Equip. Operator Mechanic	3322 Sr. Mechanic
3164 Apprentice Air Cond. Mechanic	3622 Plant Mechanic
3162 Air Conditioning Mechanic	3623 Sr. Plant Mechanic
3163 Sr. Air Conditioning Mechanic	3621 Plant Attendant
3611 Plant Operator Trainee	3238 Facility Repair Worker
3612 Plant Operator	3239 Sr. Facility Repair Worker
3613 Sr. Plant Operator	3632 Water Systems Technician
3345 Sr. Heavy Equip. Operator	3633 Sr. Water Systems Technician

- 5.15.5 The City shall provide five (5) shirts to full-time employees selected by the City in classifications specified in Section 5.16.4 above. Such shirts shall be cleaned and maintained at the employee's expense and shall be replaced by the City as required due to wear and deterioration through normal use.
- 5.15.6 If, during the term of this agreement, it is deemed that work shirts are necessary for additional classifications, representatives from the City and union will meet to discuss appropriate implementation.
- 5.15.7 All such items provided pursuant to provisions of this Subsection 5.16 shall be and shall remain the property of the City.
- 5.16 Bilingual Pay. Each full time employee who meets the eligibility requirements set forth herein shall be compensated at the rate of \$21.00 per biweekly pay period for each pay period actually worked:
- 5.16.1 The employee is or was selectively certified for a position which has been approved by the Director of Employee Services, or designee, for selective certification based on bilingual ability and is currently assigned to such position, or
- 5.16.2 The duties currently assigned to an employee and/or currently being performed by an employee require utilization of non-English on a regular basis.
- 5.16.3 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the organization.
- 5.16.4 In the event an eligible employee is on a paid or unpaid leave of absence, for a period of one full pay period or more, the appropriate reduction in the above-mentioned compensation shall be made.
- 5.16.5 If an employee is denied bilingual pay under the requirements set forth in this article, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Employee Services. The written decision of the Director of Employee Services shall be final, with no process for further appeal.
- 5.17 Life Insurance. The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee.
- 5.18 Meal Allowance. In the event an employee is assigned to work sixteen (16) or more consecutive hours, the City will provide the employee \$10.00 as a meal allowance.
- 5.19 Eligibility for Benefits. Any employee holding a position in any classification which is assigned to Representation Unit 6 who is temporarily assigned to a supervisory position in a classification which is not assigned to that Unit, shall receive not less than the economic benefits provided by this Memorandum of Agreement for the applicable Unit during their absence.

- 5.20 Brake, Lamp and Smog Certifications Incentive. An employee in the mechanic classification (3323) who obtains a brake, lamp and smog certification shall be eligible for a one-time incentive of \$250.00 upon providing proof of all three (3) certifications. An employee shall be eligible for the incentive only once in their employment with the City.
- 5.21 Class A/B License Pay. Effective July 7, 2002, employees who are in positions within classifications in which only certain positions are designated as requiring Class A or B license as a condition of employment shall be eligible for a \$40 per pay period premium pay. Specific positions within a classification that require a Class A or B license will be determined by the Department Director or designee. Those employees within classifications where a Class A or B license is required of every position in the class are not eligible for the premium pay.

## **ARTICLE 6 HOURS OF WORK AND OVERTIME**

- 6.1 The workweek shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.
- 6.2 The workday, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 6.3 The normal work schedule shall be 40 hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday.
- 6.3.1 It is understood and agreed that specific employees may be assigned a different work schedule as a result of a transfer, promotion, shift rotation, or other changes made pursuant to this agreement or applicable ordinances or resolutions. Employees who work alternating shifts, i.e. swing shift, graveyard shift, weekends, may request review of the methodology and procedures to assign employees to particular shifts. The request for review will be made through the union, to the employee's department and to the Office of Employee Relations. The department and Office of Employee Relations will arrange and participate in meetings with the union for the purpose of discussing changes that will meet the operational needs of the City and the needs of the employee.
- 6.3.2 A department may change the workday or work schedule in a section including the adoption of a four day, ten hour per day schedule, or, at the Water Pollution Control Plant, a 12-hour shift schedule, if it determines such schedule is in the City's best interest. Any employee who initiates or is placed on an alternative work schedule after March 31, 1993 will be subject to the terms and conditions contained in Article 31 of this agreement.
- 6.3.3 The Union may discuss with a department specific proposals for scheduling flexibility within the context of the regular 40-hour workweek. Departments may adopt such plans on a trial or permanent basis during the life of this contract.
- 6.3.4 The parties agree to re-open negotiations for the purpose of discussing work rule and compensation changes associated with alternate shifts at the Water Pollution Control Plant.

- 6.4 Employees shall be given two (2) consecutive days off, even though the days off are in different workweeks, except, where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.
- 6.5 The Department Director, or designee, subject to regulation and control by the City Manager, shall determine the number of hours of work per workday and workweek for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.
- 6.5.1 Part-time employees are only eligible for overtime pay if the employee works over 40 hours in one week.
- 6.6 A full-time employee authorized or required to work overtime who works in excess of eight (8) hours per day or, ten (10) hours per day if assigned to a schedule of ten (10) hours per day four (4) days per week, or twelve (12) hours per day if assigned to a 12-hour shift at the Water Pollution Control Plant or in excess of 40 hours per workweek shall be compensated at the rate of 1.5 the employee's hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill the employee's workweek requirement.
- 6.6.1 Notwithstanding 6.6 above, any full-time employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours. Notwithstanding 6.1, to be eligible for double time, paid absences shall not count towards determining eligibility for overtime at the 2.0 rate.
- 6.6.2 Double Backs. All double-backs (two non-consecutive shifts of at least eight (8) hours each within a 24-hour period) at the Water Pollution Control Plant will be compensated by a four hour premium (recorded as 1.0 OOT). This provision applies only to employees who work in a twenty-four (24) hour operation at the Water Pollution Control Plant and excludes employees who voluntarily shift trade, but includes relief personnel and shift changes.
- 6.7 Except as provided in 6.6.1, overtime worked shall be compensated at the 1.5 rate. An employee assigned to work overtime may elect to either be paid for such overtime worked or be credited with compensatory time, except under the following circumstances:
- 6.7.1 The employee's choice of compensatory time would interfere with a department's ability to recover the cost of the overtime;
- 6.7.2 The employee's choice of pay cannot be accommodated within the department's overtime budget;
- 6.7.3 If the work is being performed for another City department or outside agency, the employee's department may choose to compensate overtime with pay or compensatory time, provided the employee is notified of the method of payment prior to working the overtime; or
- 6.7.4 If the employee fails to request an election during the pay period in which the overtime is worked.

If the employee is not allowed to make the election to be paid for overtime or be credited with compensatory time under one of the circumstances cited above, the employee shall be informed of the reason for not being allowed such choice. The explanation shall be provided before the overtime is worked.

Once compensatory time off has been approved and scheduled, the employee shall be permitted to take such time off unless emergency circumstances necessitate cancellation of the time off. In such event, the employee will remain credited with the time canceled.

- 6.8 Compensatory time credited to an employee, and which is not taken within 26 pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.
- 6.9 Notwithstanding any other provision of this Section to the contrary, the Department Director, or designee, may announce the intent of the Department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department. This announced intent may apply to an entire department or to a specified section(s) of a department. The announcement will also specify a date by which time each affected employee must elect to either:
- a) be paid for all accrued, unused compensatory time, OR;
  - b) be paid for all but 24 hours of such accrued, unused compensatory time, OR;
  - c) retain all accrued, unused compensatory time, subject to other applicable provisions of this Section 6.9.
- 6.10 Any employee not making an election will retain their compensatory time, subject to other provisions of this Section.
- 6.11 Time spent on paid sick leave, disability leave, holiday leave, vacation leave, personal leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article, except for as provided in Article 6.6.1.
- 6.12 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time earned from and after July 1, 1968, shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the executor of the Will or the administrator of the estate.
- 6.13 A 15-minute paid rest period will be provided in each half of the regularly scheduled work shift. Insofar as is possible, rest periods shall be scheduled in the middle of each half of the shift. It is understood and agreed that the inability to permit an employee to take a rest period shall not be a basis for any claim for overtime compensation.

An unpaid meal break period of at least 30 minutes will be provided as near as possible to the middle of the shift, for any regularly scheduled shift of six (6) hours or longer, if practical. If no meal break is provided, the supervisor shall either adjust the end of the workday or pay the employee at the appropriate rate for the time worked.

## **ARTICLE 7 DUES DEDUCTION**

- 7.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a Unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and by-laws, provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer or designee.
- 7.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer or designee, from time to time by the designated officer of the Union as regular monthly dues.
- 7.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the Union the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than twenty one (21) days following the pay period in which the deductions were made.
- 7.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Municipal Employee Relations Officer or designee, on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 7.5 If, through inadvertence or error the City fails to make the authorized deduction or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 7.6 It is expressly understood and agreed that the Union will refund to the employee any Union dues erroneously withheld from an employee's wages by the City and paid to the Union. In the event the Union fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Union.
- 7.7 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.

## **ARTICLE 8 MANAGEMENT RIGHTS**

- 8.1 Except to the extent that the rights are specifically limited by the provisions of the Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or the City Charter including, but not limited to: The right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; transfer or reclassify employees; provide merit increases; assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.

- 8.2 The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employee affected or the International Union of Operating Engineers, Local No. 3 representing such employee.
- 8.3 The City has the absolute right to require that an employee return to assigned duties in the time of an emergency or to comply with Civil Defense requirements. The City will not, during the term of this agreement enforce the Civil Service rule that City employees reside within 30 air miles of First and Santa Clara Streets.
- 8.4 Whenever the City changes work rules or workplace policies, or issues new work rules or workplace policies, the Union will be given written notice at least ten (10) working days, absent emergency, before the effective date of the rule or policy. This notice is provided in order that the Union may request to discuss or request to meet and confer regarding the rule or policy with the City before it becomes effective .

## **ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER**

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandums of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

## **ARTICLE 10 FULL FAITH AND CREDIT**

- 10.1 It is understood and agreed that:
  - 10.1.1 Participation by any employee in a unit represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for any person, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes the services provided by employees in the representation unit, or the failure to perform lawfully required work, shall subject the employee to disciplinary action up to and including discharge.

10.1.2 If the Union, its officers or its authorized representatives violate provision 10.1.1 above or tolerate the violation of provision 10.1.1 above and after notice to responsible officers or business representatives of the Union such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 10.1.1 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said organization shall, by action of the Municipal Employee Relations Officer or designee, also be subject to suspension or revocation of the recognition granted to such Union and the Municipal Employee Relations Officer or designee, may suspend or cancel any or all payroll deductions payable to or on behalf of members of such Union, and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer or designee, shall not be subject to review under the provisions of Article 12 entitled Grievance Procedure.

## **ARTICLE 11 SAFETY**

- 11.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 11.2 An employee who believes their work assignment is unsafe and for that reason refuses to perform such assignment shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Union representative.
- 11.3 The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, the employee shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the State of California Division of Occupational Safety and Health shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Division of Occupational Safety and Health. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform.
- 11.4 The determination by the Division of Occupational Safety and Health of the safeness or unsafeness of the work assignment shall not be subject to the grievance procedure.
- 11.5 Upon request of either the employee or the representative of the Division of Occupational Safety and Health, the appropriate Union representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Occupational Safety and Health, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate Union representative shall suffer

any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.

- 11.6 If an employee's immediate supervisor believes that the employee is unable to safely perform a job assignment because of the employee's physical condition then the supervisor shall arrange for immediate medical evaluation of the employee's condition as it relates to the employee's ability to safely perform assigned duties. The employee shall cooperate with such medical evaluation.

## **ARTICLE 12 GRIEVANCE PROCEDURE**

- 12.1 Any dispute between the City and an Employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate Union representative may file a grievance on behalf of such employee(s).

- 12.2 Grievances involving Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with applicable provisions of the Resolution.

- 12.3 Alternative to the Grievance Procedure.

As an alternative to the formal grievance procedure, the City and the Union may by mutual agreement meet and attempt to informally resolve problems which arise involving contract interpretations and other matters affecting the relationship between the City and the Union. Agreement to use the alternative to the grievance procedure must comply with timelines set forth in this article. A grievance must be presented within the timelines set forth in Articles 12.4.2 and 12.5.1. However, once the parties mutually agree to informally resolve problems, the formal grievance procedure timelines are tolled pending the informal resolution process. If, in an attempt to informally resolve issues, the parties discuss matters that are not otherwise subject to the grievance procedure, such matters shall not be eligible to be grieved under the grievance provisions of this MOA .

- 12.4 Step I.

- 12.4.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor.

- 12.4.2 The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within five (5) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

- 12.4.3 If the employee is not satisfied with the reply of the immediate supervisor, the employee may appeal the grievance to 12.5 - Step II.

## 12.5 Step II.

- 12.5.1 If the employee desires to appeal the grievance to 12.5 - Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Department Director or designee, within five (5) working days following receipt of the immediate supervisor's oral reply.
- 12.5.2 The written grievance shall contain a complete statement of the grievance, the alleged facts upon which the grievance is based, the reasons for the appeal, the section or sections of the Memorandum of Agreement relied upon or claimed to have been violated, and the remedy requested. The grievance shall be signed and dated by the employee. If an employee is unavailable to sign the grievance, the Business Representative may sign on behalf of the employee. In that event, the grievance must include the name of the employee on whose behalf the grievance is being filed.
- 12.5.3 The Department Director, or designee, may arrange a meeting between the Department Director or designee, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or designee, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to 12.5 - Step II.
- 12.5.4 If the employee is not satisfied with the decision the employee may appeal the grievance to 12.6 - Step III.

## 12.6 Step III.

- 12.6.1 If the employee desires to appeal the grievance to 12.6 - Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer or designee, within five (5) working days following receipt of the written decision at 12.5 - Step II. If an employee is unavailable to sign the grievance, the Business Representative may sign on behalf of the employee. In that event, the grievance must include the name of the employee on whose behalf the grievance is being filed.
- 12.6.2 Within ten (10) working days after receipt of the appeal to 12.6 - Step III, the Municipal Employee Relations Officer or designee, shall schedule a meeting with the employee, the appropriate Union representative, the Department Director or designee, to discuss the matter. A written decision shall be given to the employee or the appropriate Union representative within five (5) working days following the meeting.
- 12.6.3 If the employee is not satisfied with the decision of the Municipal Employee Relations Officer or designee, the appropriate Union representative may appeal the grievance to 12.7 - Step IV - Arbitration.

## 12.7 Step IV.

- 12.7.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify

the Municipal Employee Relations Officer or designee, in writing, within 14 calendar days following receipt by the employee of the written answer at 12.6 - Step III.

12.7.2 Within 14 calendar days following receipt of the notice of appeal to 12.7, Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue, or issues each party will prepare its statement of the issue or issues, and submit the separate statement of issue or issues to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue or issues are.

12.7.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.

12.7.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one name remains, and that person shall be the arbitrator.

12.7.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues involved.

12.7.6 The decision shall be sent to the Municipal Employee Relations Officer or designee, and to the appropriate representative of the Union.

12.7.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.

12.7.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this agreement to the specific facts involved and to interpret only applicable provisions of this agreement.

12.7.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

## 12.8 Designated Job Representative.

12.8.1 The City shall recognize no more than 17 Job Representatives who are properly designated by the Union for such work places or areas or groups of employees as shall be approved in writing by the Municipal Employee Relations Officer or designee.

12.8.2 Such designated Job Representatives shall be responsible for maintaining the bulletin board areas which are assigned for the exclusive use of the Union and

they shall have during working hours, in urgent matters, the right to make reasonable telephone calls to the Business Representative of the Union for the purpose of reporting breaches of the Memorandum of Agreement or working conditions, except that they shall not have the right to stop any work nor to tell any employee that they cannot work on a particular assignment nor shall they conduct any Union business during working hours except as otherwise provided by provisions of this Agreement or as may be mutually agreed to by the parties.

12.8.3 No more than four (4) of the Job Representatives referenced in Section 12.8.1 may be designated as Chief Stewards. Chief Stewards shall be selected from the following three (3) departments and shall not exceed one (1) designation per department: Department of Transportation, General Services and Environmental Services. One (1) at large Chief Steward may also be designated by the Union for Parks, Recreation and Neighborhood Services issues.

12.8.3.1 Either one (1) designated Chief Steward or one (1) regular steward or except where otherwise noted below, up to two (2) designated representatives, shall be authorized release time from regular City duties to attend the following functions:

- To attend Civil Service Commission meetings when matters affecting the Union are considered.
- To attend City Council meetings when matters affecting the Union are considered.
- To attend Federated Retirement Board meetings
- To attend Benefit Review Forum meetings (up to two (2) designated representatives.)
- To attend City Labor Alliance meetings held with the City Manager or Employee Relations (up to two (2) designated representatives.)
- To attend meetings scheduled by the City Manager, or designee, when attendance is requested.

OE#3 shall notify the Office of Employee Relations with the name of the attending Chief Steward or regular steward at least seven (7) calendar days prior to the function, or as early as practical.

12.8.4 Release Time for Chief Steward and Job Representative Training. The Chief Steward and Job Representatives shall be granted a maximum of eight (8) hours paid release time during each calendar year to participate in training sessions related to the provisions of this agreement. The training shall be jointly conducted by the Union and City representatives according to an outline of such training activities to be submitted by the Union to the Office of Employee Relations for approval a minimum of 21 calendar days prior to the training session.

12.8.5 Notification. The Union agrees to notify the Office of Employee Relations in writing of any changes of Chief Stewards or Job Representatives within 30 days of such change.

## 12.9 General Provisions.

- 12.9.1 Although grievances may be processed during normally scheduled working hours, the Union agrees that the time spent by its designated representative shall be kept to a minimum and that no Union representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Union also agrees that it will not process grievances during periods of overtime.
- 12.9.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee or appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.
- 12.9.3 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provision of this Article, including arbitration, has been utilized.
- 12.9.4 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.
- 12.9.5 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 13 entitled Leaves of Absence, the employee shall file the grievance in writing at 12.4 - Step II within ten (10) calendar days following the date of separation.
- 12.9.6 Any of the time limits specified in 12.4 - Step I through 12.6 - Step III may be extended by written mutual agreement of the parties.

## **ARTICLE 13 LEAVES OF ABSENCE**

- 13.1 A request for a leave of absence without pay shall be made in writing by the employee. The appointing authority or designee, may grant an employee a leave of absence without pay for good and sufficient reason not to exceed twelve (12) months. Such leaves may, however, be extended not to exceed an additional six (6) months upon written request of the employee, subject to approval of the appointing authority or designee. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 13.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Employee Services Department or such other address as the employee may designate. Such notice shall be by certified mail, return receipt requested and shall be mailed no later than 30 days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first scheduled workday after the effective date of the cancellation, or on the first scheduled workday following the expiration of a leave, shall be considered a voluntary resignation unless the failure to return is due to extenuating circumstances beyond the control of the employee.

- 13.3 Each employee who is granted a leave pursuant to the provisions of this Article, shall, upon return from leave, be entitled to the position within the classification held by the employee at the time the leave commenced.
- 13.4 If the position to which an employee would otherwise be entitled pursuant to the above has been deleted from the department's budget during the term of the employee's leave of absence, the employee shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.
- 13.5 The employee is responsible for coordinating their return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact the supervisor to ensure that all necessary documents have been completed and steps have been taken.
- 13.6 For purposes of this Article, seniority shall be defined in accordance with Subsection 14.4.1 of Article 14 entitled Layoff.
- 13.7 Voluntary Separation From Employment. Any employee who is absent without notification to the Department Director or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary separation from employment unless the failure to report, as determined by the City, is due to extenuating circumstances beyond the control of the employee.
- 13.8 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined by the City to be the result of extenuating circumstances beyond their control shall be reinstated.

## **ARTICLE 14 LAYOFF**

- 14.1 Order of Layoff. When one or more employees in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:
- 14.1.1 Provisional employees in the order to be determined by the appointed authority.
- 14.1.2 Probationary employees in the order to be determined by the appointing authority.
- 14.1.3 Apprentice employees who are a part of an apprentice program, or employees in a trainee classification, in inverse order of seniority within the classification being reduced, or in a higher classification. In no case will a journey level employee be laid off before an apprentice employee. Nor will a journey level employee be required to move into an apprentice or trainee class.
- 14.1.4 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher classification.
- 14.1.5 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

- 14.2 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least 30 calendar days notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.
- 14.3 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:
- 14.3.1 Accept a position in a lateral or lower class in which the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
  - 14.3.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Employee Services Director or designee. An employee may also accept a vacant position in a higher class provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the most recent period of employment. Adverse decisions of the Employee Services Director or designee, regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.
  - 14.3.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.
- 14.4 As used in this Article, the following words and phrases shall be defined as follows:
- 14.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained but shall not accrue during any period of leave without pay, except for authorized military leave.
  - 14.4.2 A lower class shall mean a class with a lower salary range.
  - 14.4.3 A position in a lateral class shall mean a position in a class with the same salary range.
  - 14.4.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 14.5 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.

#### 14.6 Layoff Reinstatement Eligible List.

- 14.6.1 The names of such persons laid off in accordance with the provisions of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority; i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class.
- 14.6.2 In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.
- 14.6.3 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 14.6.4 Any person reinstated to a class which is the highest class to which the employee would have been entitled at the time of the layoff shall have their name removed from the Reinstatement Eligible List.
- 14.6.5 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three year period specified herein may request that their name be replaced on a Reinstatement Eligible List and such person's name may, in the sole discretion of the Employee Services Director or designee, be returned to the Reinstatement Eligible List.
- 14.6.6 In no event shall the name of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.
- 14.7 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

#### **ARTICLE 15 BULLETIN BOARDS**

- 15.1 The Union may use designated portions of City bulletin boards in departments which have employees in the representation units for which the employee organization is recognized.
- 15.2 Subject to the provisions contained herein, the following types of Union notices and announcements listed below may be posted on the bulletin boards:
- 15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer or designee.

- 15.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer or designee, who shall have the sole and exclusive right to order the removal of any objectionable material.
- 15.4 The Municipal Employee Relations Officer or designee, shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.
- 15.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

## **ARTICLE 16 HOLIDAYS**

- 16.1 Except as otherwise provided, each full-time employee shall be entitled to paid holiday leave on each of the following specified days, and on no other day, during the term of this Agreement:

New Year's Day	Veterans Day
Martin Luther King Day	Thanksgiving Day
Cesar Chavez Day	Day After Thanksgiving
Memorial Day	President's Day
Independence Day	Christmas Eve Day
Labor Day	Christmas Day
Columbus Day	New Years Eve Day

- 16.2 Holiday Closure. The City Manager or designee, may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off, however, it shall not be a requirement. Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees taking lost time during the closure shall continue to receive vacation, sick leave, city-wide and department seniority accruals. Eligible employees who have been employed with the City for less than 13 biweekly pay periods, may use available vacation leave during the holiday closure.
- 16.3 Except as otherwise designated, any holiday specified herein, including any other day proclaimed or designated by the City Council as a holiday for which full-time employees are entitled to holiday leave, which falls on a Sunday shall be observed for purposes of this Article on the following Monday. Such holidays which fall on a Saturday shall be so observed on the preceding Friday.
- 16.4 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays; provided, however, that subject to regulation and control by the City Manager, the Department Director or designee, may specify the days of the week and the hours of such days when any such employee in their department or under their

jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any or all of said holidays shall receive the salary they would be entitled to for that day at their regular rate of pay, and in addition shall receive compensatory time off duty equal to 1.5 the number of hours which the employee works on said holiday.

- 16.5 For employees who were placed on an alternate work schedule prior to March 31, 1993, if any of said holidays falls on a full-time employee's regular day off, during which he is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during his or her assigned workday. The union office and the Office of Employee Relations have a complete list of said employees. Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.6 of this Agreement; provided, however, that upon written request by the employee to the Department Head, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to him multiplied by the employee's equivalent hourly rate.

16.5.1 Any employee who initiates or is placed on an alternate work schedule after March 31, 1993 will be compensated for holidays based upon an eight hour standard per holiday. Such employee shall be entitled to eight (8) hours of compensatory time off duty. The terms of this holiday compensation can be found in Article 31 of this agreement.

- 16.6 For employees on an alternate work schedule if any of said holidays falls on a full-time employee's regular day off, during which the employee is not required to work, such employee shall be entitled to eight (8) hours of compensatory time off duty for full day holidays. Said compensatory time off duty shall be credited to such employees in accordance with Article 6, Subsection 6.6 of this Agreement; provided, however, that upon written request by the employee to the Department Director or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, additional compensation equal to the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.
- 16.7 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San Jose or other applicable law, and not in addition.

## **ARTICLE 17 VACATIONS AND PERSONAL LEAVE**

- 17.1 Each eligible full-time employee, who has been employed as such for at least 13 biweekly pay periods, shall be granted vacation leave with pay in accordance with the following:
- 17.1.1 Vacation Accrual. Employees shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872, as amended. An employee shall be entitled to accrue vacation leave in the amount specified below for each cycle of 26 full biweekly pay periods immediately

preceding December 31st, or portion thereof, in each year of employment as specified.

<u>Years of Service</u>	<u>Hours of Vacation Per 26 Pay Period Cycles</u>
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First 5 years	80 hours
6th - 10th year	120 hours
11th - 12th year	136 hours
13th - 14th year	152 hours
15th year or more	168 hours

17.1.2 Carry-Over of Vacation Leave. An employee may carry over to the next subsequent cycle of 26 biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which the employee is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. Unless an excess carryover is approved, an employee carrying-over greater than the maximum allowable vacation hours (200 hours) shall have the excess amount deducted from the following year's accrual.

17.1.3 Reimbursement for Unearned Vacation Leave.

17.1.3.1 If the employment of any full-time employee should cease, and if the employee should have taken more vacation leave than accrued at the time of termination of employment, there shall be deducted from the employee's final pay, or shall refund to the City, such pay as shall have been received for vacation leave taken by the employee.

17.1.3.2 The provisions of Subsection 17.1.3 shall not apply to any full-time employee whose employment by the City is terminated by reason of the employee's death, or entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration.

17.1.4 Payment for Unused Accrued Vacation Leave Upon Termination of Employment. If the employment by the City of any full-time employee should cease, the employee shall be given, at the time of such termination, full pay for any vacation leave which may then have accrued.

17.2 Vacation Pay. If, in the judgment of the City Manager or designee, it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, such work may be authorized. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to the employee's regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, may elect, in writing, filed with the Director of Employee Services or designee, to carry over such leave to the subsequent cycle of 26 biweekly pay periods.

17.3 Vacation Leave. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation

purposes shall be required to commence such leave at a time other than the beginning of a workweek, unless the employee elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the length of time served by each employee within the relevant classification, and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employees in such classification. Employees shall submit written requests for all vacation leave in advance and as early as practical. Written response to the leave request will be provided back to the employee within ten (10) working days of the receipt of the written request.

#### 17.4 Computation of Vacation Leave.

17.4.1 For purposes of this Article, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time off, or any other paid leave, shall be deemed to be "time worked."

17.4.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation during the first 13 pay periods of employment even though some employees may, upon satisfactory completion of the initial probationary period, be entitled to additional vacation pursuant to the above.

17.5 Personal Leave. Effective the first pay period of each payroll year, each full time employee shall be entitled to a maximum of 16 hours of personal leave per 26 pay period cycle. Such leave may be scheduled in one-half hour increments, at any time, subject to approval of the supervisor. Personal leave is not accrued. Any such leave not taken by the date of termination for employees terminating during the year, or by the end of the last pay period in the calendar year for other employees, shall not be paid out nor carried over to subsequent years. Under no circumstances, such as promotion, transfer, and/or rehire, shall an employee receive more than 16 hours of Personal Leave in any given calendar year.

17.5.1 First Year of Employment. An employee hired after July 1 shall be provided a maximum of eight (8) hours of personal leave in the first calendar year of employment.

### **ARTICLE 18 SICK LEAVE**

18.1 Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

18.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Only paid leave for holidays, vacation, disability, compensatory time off, or other paid leave shall be considered as time worked for purposes of this section.

18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments, illness in the immediate family as defined herein; or absence of an

eligible female employee due to illness, injury or disability related to pregnancy or child-birth. Immediate family shall be limited to the eligible employee's mother, father, spouse, child or domestic partner registered with the Employee Services Department. Up to 48 hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother, or stepchild.

18.1.2.1 Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Article 19 Disability Leave, Part 19.6.1, or if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Employee Services or designee, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.

18.1.2.2 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.

18.1.2.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 19 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 19, and who is entitled to Workers' Compensation temporary disability benefits, and has exhausted all other available paid leave shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in one-half hour increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.

18.1.3 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician. If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.

18.1.4 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee notifies their immediate superior, Department Director, or designee of intent to take sick leave, and of the reasons for taking sick leave, at least one-half hour prior to the commencement of the sick leave. If the employee fails to notify their immediate supervisor, Department Director, or designee at least one-half hour prior to the commencement of the sick leave, it can result in disciplinary action unless the failure is due to extenuating

circumstances beyond the control of the employee. The City Manager or designee, however, may waive the requirement of such notice upon presentation of a reasonable excuse by such employee. Upon written approval by the Office of Employee Relations and the OE#3 Union, departments may require an earlier call-in where work crew situations or other departmental needs require.

- 18.1.5 An employee may be required to furnish medical verification or other substantiation for any absence for which sick leave payment is requested.
- 18.1.6 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job-related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, in all situations where such employee is not entitled to sick leave with pay. No single period of sick leave without pay shall exceed 12 consecutive or cumulative months, in any period of 24 consecutive months. Any employee who is unable to return to work at the expiration of either of these periods of time shall be considered to have voluntarily separated from City service.
- 18.1.7 Accrued sick leave may also be used in accordance with the Catastrophic Illness provisions contained in this MOA.
- 18.1.8 When an employee has exhausted all of his/her sick leave, the employee may be allowed to use accrued vacation or compensatory time in lieu of unpaid time subject to the approval of the Department Director or designee and pursuant to 18.1.5 above, may require medical verification.
- 18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement or death under one of the following conditions:
  - 18.2.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.
  - 18.2.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.
  - 18.2.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least 15 years of service in any applicable retirement plan.
  - 18.2.4 Death of Separated Employee. The estate of any full-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.

18.3 Payout shall be determined as follows.

18.3.1 If a full-time employee at the time of retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death.

18.3.2 Less than 400 hours - Hours accumulated x 50% of final hourly rate;  
or 400 - 799 hours - Hours accumulated x 60% of final hourly rate;  
or 800 - 1200 hours - Hours accumulated x 75% of final hourly rate.

Effective January 29, 2006, if a full-time employee at the time of retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent **[in accordance with the chart below]** of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death.

Less than 400 hours	Hours accumulated x 30% of final hourly rate;
or 400 - 999 hours	Hours accumulated x 50% of final hourly rate;
or 1000 - 1200 hours	Hours accumulated x 70% of final hourly rate.

18.4 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

## ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.

19.2 Eligibility for Disability Leave Supplement. A full-time employee who is required to be absent from work due to a job-related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period. DLS will also be paid for intermittent absences for medical appointments and physical therapy pursuant to the resolution of grievance #624 (2/15/85).

- 19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one (1) year.
- 19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:
- 1) an act of gross negligence of such employee;
  - 2) any work voluntarily undertaken by employee from which the employee has been prohibited from engaging in as determined by a City physician, prior to the date of injury.
- 19.5 Ineligibility if Offer and Decline of Modified Duty. DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.
- 19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:
- 1) the time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period;
  - 2) the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
  - 3) Nine (9) calendar months (274 days) or 1560 hours, if not continually absent following date of injury.
- 19.6.1 Time Limit for DLS Eligibility. After 1560 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which the employee is claiming DLS.
- 19.6.2 Suspension of Disability Leave Supplement. The City may suspend Disability Leave Supplement in lieu of or as part of a disciplinary suspension, demotion or pay reduction. The City shall proceed with due process requirement, unless the employee is non-ambulatory and is determined by a physician to be medically unable to participate. An employee who is unable to participate may send a representative in their absence.
- 19.7 Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.
- 19.8 Requirement of Evidence Proving Temporary Disability. The Director of Finance or designee, is responsible for determining eligibility for DLS. In making this determination, the Director or designee, may require the employee to provide proof of injury or illness, proof that the injury or illness was job related, proof of the disability and how long the

injury or illness will last, and proof of other relevant matters as determined by the Director or designee. The Director or designee, may require the employee to submit to a medical examination by a physician selected by the City.

- 19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this article and the integration of Sick Leave, accrued vacation, and compensatory time off with Workers' Compensation provided for in Article 18.1.2.3 may be considered to have voluntarily separated from employment.

## **ARTICLE 20 AGENCY FEE**

### **20.1 Employee Rights.**

20.1.1 The City and the Organization recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

20.1.2 Accordingly, membership in the Organization shall not be compulsory. An employee has the right to choose, either; to become a member of the Organization; or, to pay to the Organization a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 20.6 below.

### **20.2 Employee's Obligation to Exclusive Representation.**

20.2.1 An employee who is a member of the organization on January 12, 1986, and any employee who becomes a member after January 12, 1986, shall maintain such membership, except as provided during the change of status period set forth in Section 20.2.3 below.

20.2.2 Any person who becomes an employee on or after January 12, 1986, must, within 30 days after their employment, submit to the City either:

20.2.2.1 A signed authorization to deduct dues as a member of the organization;  
or,

20.2.2.2 Voluntarily sign and deliver to the City a written assignment authorizing deduction of the properly established agency fee as defined in Section 20.3 below, subject to the conditions set forth elsewhere in the Memorandum for payroll deductions. Upon voluntary authorization duly completed and executed, the City will deduct from the pay of an employee and pay to the organization the normal and regular monthly Agency fee; or,

20.2.2.3 A signed affidavit that the employee qualifies for an exemption as set forth in Section 20.6.1 below. In this case the employee must designate a charity from Section 20.6.2 to which the appropriate amount will be paid through payroll deduction.

- 20.2.2.4 If a person fails to make any of the designations set forth above within the 30 day period, they will be given notice by the City that the Agency fee deduction will be made beginning with the first full pay period following the expiration of the 30 day period. The City and the organization agree that the agency shop fee shall be paid in exchange for representation services necessarily performed by the organization in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the organization.
- 20.2.3 During the periods of March 14, 2006 through April 14, 2006 any employee who is a member of the organization may, by written notice to the Municipal Employee Relations Officer or designee, resign such membership and change their status to the agency fee or exempt category in accordance with the provisions of this article.
- 20.2.4 Upon the return from leave of absence of any employee or upon the recalling of an employee from layoff status on or after January 12, 1986, the employee's options under this article will be determined by their original date of hire.
- 20.2.5 The parties expressly agree that the authority granted the Employee Relations Officer or designee, in Article 10, Full Faith and Credit, to cancel payroll deductions in the event of a concerted activity extends to the cancellation of agency fee and dues deductions.
- 20.2.6 The organization specifically agrees that the provisions of Section 20.7 of this article apply to any claims against the City or any of its agents or employees regarding the payroll deduction of agency fee.

20.3 Definition of Agency Fee.

- 20.3.1 The agency fee collected from non-member bargaining unit employees pursuant to Section 20.2 of this Memorandum shall be limited to the Organization's (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer or designee, from time-to-time by the designated officer of the Organization as the agency fee.
- 20.3.2 The Organization certifies that this "representation fee" includes only those costs actually incurred by the Organization in representing employees, who are not also members of the Organization, in matters specifically and directly connected with the enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Organization further certifies that this "representation fee" excludes all other costs, fees, and adjustments including, but not limited to: Organization fines, back dues, initiation fees, or any other charge required as a condition of Organization membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities, any and all amounts which do not constitute costs actually incurred by the Organization in representation matters specifically and directly connected with the bargaining of, enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Organization specifically agrees that the provisions of Section 20.7 of this Article apply to any

claims against the City or any of its agents or employees regarding the appropriateness of the amount of any "representation fee" set forth in this Section.

20.4 Exceptions. The provisions of this Article shall not apply to non-benefited part-time employees.

20.5 Annual Verification of Agency Fee by Organization. The Organization shall submit to the City a detailed written financial report of its financial transactions in the form of a balance sheet and an operating statement, certified as to accuracy by the Organization's Executive Secretary. Each year such reports shall be verified and submitted in writing to the Office of Employee Relations by the Organization within 60 days of July 1st.

20.6 Employees Exempted From Obligation to Pay Organization.

20.6.1 Any employee shall be exempted from the requirements of Section 20.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.

20.6.2 Such exempt employee shall, as an alternative to payment of an agency fee to the Organization, pay an amount equivalent to such agency fee to either:

- a) The United Way;
- b) Combined Health Agencies Drive (C.H.A.D.);
- c) Any charity jointly agreed upon by the City and the Organization. Such charities cannot be affiliated in any manner with the Organization, nor can such charity be related to an established religious organization.

20.7 Hold Harmless. The Organization shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to agency fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.

20.8 Expiration Date of Agency Fee Provisions. It is agreed and understood by the parties to this Memorandum that the provisions, rights and obligations herein pertaining to payment of any agency fee and dues deduction shall not survive beyond the term of this Memorandum, and shall accordingly expire on April 14, 2006, provided however that, pursuant to Government Code Section 3502.5, this Article 20 may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Memorandum of Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least thirty (30) percent of the employees covered by this Article; (2) such vote shall be by secret ballot; and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.

## **ARTICLE 21 BEREAVEMENT LEAVE**

21.1 Each full time or benefited part-time employee shall be granted bereavement leave with full pay for up to 40 work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee, employee's spouse or employee's domestic partner. All leave must be used within 14 calendar days following the death of an applicable relative:

- a) Parent/Step-Parent
- b) Child/Step-Child
- c) Spouse
- d) Brother/Sister/Step-Brother/Step-Sister/Half-Brother/Half-Sister
- e) Grandparent/ Step-Grandparent
- f) Great Grandparent/Step-Great Grandparent
- g) Grandchild
- h) Brother/sister/son/daughter in-law
- i) Domestic Partner

21.1.1 A domestic partner, as referenced in Section 21.1, must be registered with the Employee Services Department.

21.2 Anything herein above to the contrary notwithstanding, no such employee shall be granted Bereavement Leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such Bereavement Leave is required.

## **ARTICLE 22 SUPPLEMENTAL BENEFITS FOR PART-TIME EMPLOYEES**

22.1 Any other provisions of this Agreement to the contrary notwithstanding, part-time employees "indefinitely assigned" to "regularly scheduled part-time positions" as said terms are hereinafter defined shall be eligible for and shall be granted the following supplemental benefits.

22.2 Vacation Leave. During the term of this Agreement, and subject to the same restrictions, conditions and limitations applicable to full-time employees as provided in this Agreement except as otherwise hereinafter provided eligible part-time employees shall accrue and be granted leave of absence with full pay for vacation purposes on the following basis:

22.2.1 During the first 10,400 hours of employment, in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.03875 hours of vacation leave for each hour worked, exclusive of overtime.

22.2.2 During the first 10,400 hours following the employee's first 10,400 hours, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.05875 hours of vacation leave for each hour worked, exclusive of overtime.

22.2.3 During the first 4,160 hours following the employee's first 20,800 hours of employment, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.06625 hours of vacation leave for each hour worked, exclusive of overtime.

- 22.2.4 During the first 4,160 hours following the employee's first 24,960 hours, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.07375 hours of vacation leave for each hour worked, exclusive of overtime.
- 22.2.5 During each hour following completion of 29,120 hours of employment, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.08125 hours of vacation leave for each hour worked, exclusive of overtime.
- 22.2.6 Carry over vacation shall be limited to 120 hours or the employee's maximum allowable accrual in the previous cycle, whichever is less.
- 22.2.7 Vacation leave may be taken only after completion of 1,040 hours of employment and in an amount equal to but not more than the amount of vacation accrued.
- 22.2.8 Any such part-time employee shall be entitled to paid vacation leave only for those days and number of hours the employee is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 22.2.9 No eligible part-time employee shall be entitled to vacation leave with pay for any day or portion of a day during which the employee is absent, if in fact the employee is not assigned to work or would not have been required to work on that day or portion of that day, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 22.3 Sick Leave With Pay. During the term of this Agreement, sick leave with pay shall be granted to eligible part-time employees in the amount of 0.04616 hours of sick leave for each hour worked, exclusive of overtime, and shall be subject to the same restrictions, conditions and limitations as are applicable to paid sick leave for full-time employees.
- 22.3.1 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours the employee is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 22.3.2 No eligible part-time employee shall be entitled to sick leave with pay for any day or portion of a day during which the employee is absent, if in fact, the employee is not assigned to work or would not have been required to work on that day or portion of that day, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 22.4 Holiday Benefits. Holiday leave with pay and compensation for time worked on a holiday shall be granted to eligible part-time employees on the same basis and subject to the same restrictions, conditions and limitations as apply to such leave with pay and such compensation for full-time employees; provided, however, that each eligible part-time employee shall be eligible for holiday leave with pay for a number of hours each holiday based on the number of hours per week such part-time employee is indefinitely assigned to work in the employee's regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week schedule:

<u>Regularly Scheduled Hours Per Week</u>	<u>Hours of Leave With Pay Each Holiday</u>
20-24 hours	4 hours
25-29 hours	5 hours
30-39 hours	6 hours

22.4.1 Compensation for holidays shall be according to the above schedule regardless of the number of hours any eligible part-time employee may have been scheduled to work or would have been required to work on any designated holidays. If full-time employees are granted holiday leave with pay for a period of four (4) hours on a day that would be a regularly scheduled, full work day were it not for the holiday, eligible part-time employees shall receive holiday leave with pay in an amount equal to one-half of the hours shown above.

22.4.2 Each part-time employee who is not eligible to receive supplemental benefits provided by this Article and who is required to work on any of said holidays shall receive the salary that the employee would be entitled to for the hours worked on that day at the employee's regular rate of pay, and in addition, shall receive compensation in a sum equal to one-half times their hourly pay multiplied by the number of hours worked on such holiday, provided and excepting, however, that no part-time employee who is required to work on any of said holidays and who received a flat daily rate of pay, plus room and board shall be entitled to or shall be paid any compensation in addition to their regular flat daily rate of pay plus room and board.

22.5 Health and Dental Insurance Benefits. During the term of this Agreement, the City shall pay for each eligible part-time employee who is a subscriber to benefits provided for individual coverage, or for individual coverage plus coverage of dependents, under one of the health and dental insurance plans provided for full-time employees, sums of money equal to the percentage of the City's contribution for full-time employees for such individual coverage, or individual plus coverage of dependents, based on the number of hours per week such part-time employee is indefinitely assigned to work in their regularly scheduled part-time position. Such sums of moneys shall be determined in accordance with the following such hours per week and percentages:

City Contribution for P/T Employees Regularly Scheduled as Percentage of City Contribution:

<u>Hours Per Week</u>	<u>For Full-Time Employees</u>
20 - 24 Hours	50.0%
25 - 29 Hours	62.5%
30 - 39 Hours	75.0%

22.6 Shift Differential. Part-time employees indefinitely assigned to regularly scheduled part-time positions, as defined herein, who are regularly assigned to work a shift of three hours or more, regularly scheduled to start between the hours of 2:00 p.m. and 5:59 a.m., shall be paid a shift differential of \$1.40 per hour for each hour, to the nearest half hour, actually worked during such shift. Notwithstanding the provisions contained herein, such part-time employees who are regularly assigned to work a shift regularly scheduled to start between 12:00 noon and 1:59 p.m., shall be paid a shift differential of \$1.40 per hour commencing with the fifth hour worked on such shift. Except as required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.

22.7 Bilingual Pay. Each eligible part-time employee who meets the further eligibility requirements set forth herein shall be compensated at the rate of \$14.00 per biweekly pay period for each pay period actually worked.

22.7.1 The employee is or was selectively certified for a position which has been approved by the Director of Employee Services for selective certification based on bilingual ability and is currently assigned to such position, or

22.7.2 The duties currently assigned to an employee and/or currently being performed by an employee require utilization of a non-English language on a regular basis.

22.7.3 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the Union.

22.7.4 In the event an eligible employee is on a leave of absence, with or without compensation, for a period of one (1) full pay period, the appropriate reduction in the above-mentioned compensation shall be made.

22.8 Eligible Employee.

22.8.1 As used herein, the term "regularly scheduled part-time position" shall mean a position within a department designated by the department in writing as requiring at least 20 hours and not more than 39 hours of regularly scheduled work per week on a year round basis for an indefinite period of time.

22.8.2 Designations made pursuant to the foregoing may be made or rescinded at any time at the discretion of the City Manager or designee, or the Department with the approval of the City Manager or designee.

22.8.3 As used herein, the term "indefinitely assigned" shall mean an assignment to a regularly scheduled part-time position without limitation of any kind as to duration. Nothing herein contained, however, shall be construed to limit the right of the Department Director and of the City Manager or designees, as contained in Article 6, Section 6.5 of this Agreement, to determine the days of the week and hours of each day when any such part-time employee shall be required to work, or whether such part-time employee shall work at all, notwithstanding the above mentioned designation, scheduling and assignment.

## **ARTICLE 23 AUTHORIZED REPRESENTATIVES**

23.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:

23.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer or designee, except where a particular Management representative is otherwise designated.

23.1.2 The Union's principal authorized agent shall be the Business Manager, or designee.

## **ARTICLE 24 SEPARABILITY**

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulations, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

## **ARTICLE 25 PROBATIONARY PERIOD EXTENSION**

An employee's probationary period may be extended at the discretion of the City for up to a maximum of three months of actual and continuous service.

## **ARTICLE 26 RETIREMENT**

26.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.

26.1.1 If an employee receives a service-connected disability retirement, pursuant to an application for such retirement made on or after July 13, 1986, the retirement benefit will be offset by subsequent workers' compensation payments except for survivorship benefits and permanent disability payments for retirees receiving a 100% permanent disability rating.

26.1.2 Administrative costs of the Federated Retirement System, including staff salaries and indirect labor costs, are to be paid from the retirement fund. Costs to the fund for staff salaries and indirect labor costs shall not exceed 0.07% of assets in the fund per year.

## **ARTICLE 27 PERFORMANCE EVALUATION**

27.1 The purpose of performance evaluation is to have formal communication between supervisor and employee regarding job performance. It is a value to both parties to have this process be meaningful and fair.

27.2 In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions. Counseling should be separate from normal worksite dialogue and should occur as close in time to the event or problem as possible. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.

27.3 Documentation of oral counseling should be given to the employee at the time of the counseling and will not be placed in the employee's official department or City personnel file. This documentation will include specific suggestions for corrective action, if appropriate.

- 27.4 Key Element Review. If the employee formally receives an overall performance rating of meets standard, but receives a below meets standard in an individual key element rating, the employee may request a review of that individual key element by the Department Director, or designee. The employee must submit a written request to the Director, or designee, specifying the reasons for such request, within 30 calendar days from the date the employee received the final performance appraisal. The Director, or designee, shall investigate the request, arrange a meeting with the employee and provide a written response to the employee within 30 calendar days of receipt. The written response of the Director, or designee, shall be final.
- 27.5 Overall Rating Appeal. If the employee formally receives an overall performance rating that is below "meets standard," the employee may appeal the rating. Such appeal shall be made in writing to the Department Director, or designee within 30 calendar days from the date the employee received the final performance appraisal. The Director, or designee, shall investigate the appeal, arrange a meeting with the employee and provide a written response to the employee within 30 calendar days of receipt.
- 27.5.1 If the employee is dissatisfied with the decision of the Department Director or designee, the employee may, within ten (10) calendar days from the Director's, or designee's response, request a hearing with the City Manager or designee. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decisions previously rendered.
- 27.5.2 The City Manager or designee, shall hold a hearing within a reasonable time, and within ten (10) days of the hearing shall inform the employee of the decision. The decision of the City Manager or designee, shall be final. This will be the only appeal process applicable to review the performance appraisal. The employee shall have the right to Union representation at the hearing with the Department Director or designee, or the City Manager or designee.

## **ARTICLE 28 DISCIPLINE**

Disciplinary action is defined as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the term of the salary reduction will be specified in the notice of intended discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

The City has a policy of progressive discipline. Discipline is intended to be corrective whenever possible. Discipline will be initiated pursuant to the guidelines outlined in the City of San Jose Discipline Training Handbook. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense.

The City recognizes the process of timely, fair and consistent disciplinary actions is a key factor in maintaining positive employer-employee relations. It is in the interests of both parties to have allegations of misconduct investigated in a thorough and timely fashion.

The appeal process for any disciplinary action shall continue to be only those in effect at the time of the execution of this agreement.

No provisions of this Article 28 shall be subject to the grievance procedures of this agreement.

## **ARTICLE 29 EMPLOYEE ASSISTANCE REFERRAL**

- 29.1 If deemed desirable for job-related reasons, a supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP). The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.
- 29.2 Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

## **ARTICLE 30 SUBSTANCE ABUSE TREATMENT PROGRAM**

- 30.1 Full-time and permanent benefited part-time employees are eligible for substance abuse treatment benefits and are subject to the terms and conditions of the negotiated OE#3 Substance Abuse Policy (Exhibit II).

## **ARTICLE 31 ALTERNATE WORK SCHEDULE**

- 31.1 The City and the Union agree that the availability of Alternate Work Schedules is a valuable benefit to employees in that it promotes job satisfaction, and is of benefit to the City in that it reduces traffic congestion and demands on limited parking facilities. The use of alternate schedules is encouraged, where it can be accommodated without impairing departmental operations or public service.
- 31.2 As an alternative to the normal work schedule assigned by the Department in accordance with Article 6.3, and subject to the concurrence and approval of the respective Department Director or designee, a regular full-time employee may work an alternate work schedule. The following conditions and restrictions apply to all employees working an alternate schedule.
- 31.2.1 An employee may work a biweekly work schedule which varies from the normal schedule in the number of hours worked per day and in the number of days worked per week, except that no single workday may exceed ten (10) hours, and total scheduled hours may not exceed 80 hours in any biweekly pay period. Unless otherwise specified in this Memorandum of Agreement, alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly period. Examples of schedules which may be elected include:
- Four 10-hour days each week.
  - Four 9-hour days and one 4-hour day each week.
  - Eight 9-hour days, one 8-hour day, and one day off each biweekly pay period.

31.2.2 No alternate work schedule may be established in which overtime is incurred as a part of the established work schedule either under this agreement or under Federal or State law.

31.2.3 The alternate schedule is designed to accommodate the needs of the employee and the work unit. Once elected and approved, it is intended to continue for an indefinite period. However, should the needs of the employee or work unit dictate, the alternate schedule may be terminated with reasonable notice.

31.2.4 It is further understood that any alternate schedule agreement entered into pursuant to the provisions herein, shall terminate immediately upon the date of the transfer, promotion or demotion of the employee.

31.2.5 Neither the failure of the Department to enter into an alternate schedule agreement, nor the termination by the Department of any such agreement, shall be subject to the Grievance Procedure provided in Article 12.

31.2.6 For a schedule of 4-10 hour days, the three (3) consecutive days off may be waived by mutual agreement.

### 31.3 Holiday Compensation for Employees on Alternate Work Schedules.

31.3.1 If a holiday is observed on an employee's regularly scheduled workday, the employee shall be entitled to pay for the number of hours the employee was scheduled to work that day, up to ten (10) hours.

31.3.2 If a holiday is observed on an employee's regularly scheduled day off, the employee shall be credited with eight (8) hours compensatory time off at the 1.0 rate for a full day holiday.

31.3.3 If an employee on an alternate schedule works on a holiday, the employee shall receive eight (8) hours of compensatory time at the 1.0 rate for a full day holiday, and in addition shall receive pay or compensatory time off at the 1.5 rate for the number of hours actually worked.

31.3.4 Holiday Compensation for Employees in the Water Pollution Control Plant Division of the Environmental Services Dept. on Alternate Work Schedules

1. If an employee on an 8 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.
2. If an employee on an 9 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.
3. If an employee on a 10 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.

4. If an employee on a 12 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.
5. If an employee is scheduled off on a holiday, regardless of the schedule selected, the employee will receive eight (8) hours holiday pay.
6. If an employee is called in to work on a scheduled day off that falls on a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.

## **ARTICLE 32 LABOR MANAGEMENT COMMITTEES (LMC)**

- 32.1 Purpose. To serve as an advisory committee and to facilitate employee involvement in issues which affect the immediate work environment and to facilitate positive union-management relations.
- 32.2 Structure. Departments may set up committees based upon mutual agreement. Management and labor each select three (3) representatives. There may be alternates as appropriate. All participants are encouraged to propose issues for discussion, and the committee will set priorities. Decision making within this forum will be by consensus. The LMCs will schedule quarterly meetings, and establish a method for calling additional meetings to handle issues on an ad hoc basis.
- 32.3 Authority. LMCs provide a forum for discussion of employee and management concerns and may recommend solutions. LMCs may be used for a preliminary review of department initiated changes to policies or practices. Guidelines will be issued by the Office of Employee Relations on the types of subjects that would be appropriate for discussion e.g., alternate work schedules, shift bidding, vacation bidding, internal transfer policies, clarification of rules and departmental procedures, rumor control etc.

The LMCs are not authorized to meet and confer to create contractual obligations, nor are they authorized to change the MOA to authorize any practice in conflict with existing contracts or rules.

The Office of Employee Relations and the OE#3 Business Agent will be involved in LMC meetings as necessary. The LMCs should keep both parties informed of their discussions, and provide copies of any written materials they generate. The Office of Employee Relations will provide training for the committee members and an orientation for Department Directors. This process is not designed for individual grievances, disciplines or to replace the Steward system.

## **ARTICLE 33 SUPERVISION OF INMATES AND PROGRAM PARTICIPANTS**

Supervision of inmates in the Work Furlough Program will be restricted to City employees in a lead or supervisory capacity only. Only employees with lead or supervisory responsibilities in their job description may be assigned to supervise a work crew.

The City and the Union agree that the use of persons, who in the course of legal proceedings, are required to perform community service, is a valuable resource, but not intended to replace full time permanent Civil Service employees.

33.1 The City shall maintain a list of the programs that provide inmates or participants currently in use by the City. Each applicable department will maintain records of the number of inmates or participants utilized, and the Office of Employee Relations will provide this information to the Union when requested, but not more than on a semi-annual basis.

33.2 The supervision of inmates or participants in the applicable programs will be restricted to City employees with lead or supervisory responsibilities in their current job classification specifications and have completed the training required by the applicable program(s) and the training required by the City.

33.2.1 Pursuant to Article 5.5, the supervision of inmates or participants in the applicable programs may also be assigned to City employees who are receiving Higher Class pay for a temporary absence or a vacant position with lead or supervisory responsibilities in that job description and who have completed the training required by the applicable program(s).

#### ARTICLE 34 CATASTROPHIC ILLNESS OR INJURY TIME DONATION PROGRAM

34.1 Policy Statement. This provision is designed to assist an employee who has exhausted paid leave time due to a critical medical condition of the employee or an eligible family member. This provision allows other employees to donate leave in accordance with the following terms so an employee may continue in a paid status with the City for a longer period of time.

34.1.1 Definitions. For purposes of this article the following definitions shall be used.

- a) Eligible Employee. A full or part-time benefited employee.
- b) Eligible Family Member. 1) A legal spouse or a significant other with whom the employee is co-habiting in lieu of a spouse and is receiving City health benefits; 2) A person under 18 years of age, or a person incapable of self-care because of a physical or mental disability who is a biological, adopted, foster or step child, or a ward of the employee; 3) A person for whom the employee is charged with a parent's legal rights, duties and responsibilities.
- c) Catastrophic Illness or Injury. A critical medical condition considered to be life threatening, terminal, or a long-term major physical impairment or disability.

34.1.2 Employee Catastrophic Illness or Injury Leave Donation. An eligible employee may receive donations of accrued vacation and/or compensatory time which shall be converted to sick leave and added to the employee's sick leave balance if the employee has suffered a non-job related catastrophic illness or injury which prevents the employee from being able to work.

- 34.1.3 Care For Eligible Family Member. An eligible employee may receive donations of accrued vacation and/or compensatory time which shall be converted to sick leave and added to the employee's sick leave balance if the employee is required to be absent from work to care for an eligible family member who has a catastrophic illness.
- 34.1.4 Eligibility for Donated Leave. To be eligible to receive donated paid leave, the recipient employee's illness or injury, or necessary care of an eligible family member, must require the employee to be absent for a minimum of 30 consecutive calendar days, or 30 cumulative work days within the six previous months. The recipient employee must have exhausted all available paid leave prior to using donated leave, however, the request may be initiated prior to the anticipated date leave balances will be exhausted. Retroactive donations shall not be permitted.
- 34.1.5 Use Of Sick Leave for Eligible Family Member. In the event an employee becomes eligible for donated leave due to the catastrophic illness of an eligible family member, the employee may be eligible to use accumulated sick leave in excess of three days per occurrence if the employee has exhausted all other available paid leave. However, the employee must meet all of the requirements of the donated leave program and submit appropriate medical verification in order to be eligible to use earned sick leave. This is the only situation in which an employee is eligible to use sick leave in excess of three (3) days per occurrence due to the illness of an eligible family member.
- 34.1.6 Application. The recipient employee, recipient employee's family, or other person designated in writing by the recipient employee, must submit a written request along with medical verification to the Employee Services Department.
- 34.1.7 Medical Verification. Medical verification, including diagnosis and prognosis, must be provided by the recipient employee and a copy submitted to Employee Health Services in the Employee Services Department. Employee Health Services shall review the medical verification, consult with the treating physician, and determine whether or not the illness/injury is catastrophic.
- 34.1.8 Maximum Donation. A recipient employee is eligible to receive a total maximum of 1040 hours of donated leave time during their employment with the City. The amount of donated leave time available to an employee shall be appropriately prorated for benefited part-time employees.

34.1.8.1 Increase to Maximum Donation. If an eligible employee exhausts the maximum 1,040 hours of donated leave and if the employee's or eligible family member's catastrophic illness or injury prevents the employee from returning to work, the employee or the employee's designee may apply for an increase of the maximum to 2,080 total hours of donated leave. Application for the increased maximum shall be made to the City Manager through the Office of Employee Relations. The application shall include a recommendation from the Department Director and shall be evaluated based upon the operational impact on the employee's department and subject to re-verification of the medical condition to determine if the illness or injury still qualifies as catastrophic and prevents the employee from returning to work. The denial of an application for an increase to the maximum donated leave is final and is not subject to the grievance procedure.

34.1.9 Increments. Donations of vacation and/or compensatory time shall be made in increments of full or half-hours and are irrevocable.

34.1.10 Conversion. Donations shall be on a dollar for dollar basis. The value of donated leave time shall be calculated at the donor's regular pay rate, then converted to hours of sick leave at the recipient's regular pay rate to the nearest half (0.5) hour to determine the number of hours of sick leave available to recipient. For employees covered by the City's salary continuation insurance plan, use of donated leave will be an offset to benefits in accordance with the provisions of that plan.

34.1.11 Unused Donations. Unused hours remaining when the recipient returns to work or is separated from employment with the City shall be retained by the recipient. In the event of the death of the recipient while still employed by the City, any donated unused leave time remaining at the time of death will be paid to the recipient's estate at 100% of the value at the employee's final hourly rate.

## **ARTICLE 35 NEW EMPLOYEE ORIENTATION**

The City shall provide the OE#3 Business Agent reasonable access (up to 30 minutes) to new employees during the quarterly new employee orientations to provide information on OE#3. Attendance at any presentations by OE#3 shall be voluntary on the part of the new employee. The OE#3 Business Agent shall work out arrangements with the Employee Services Department.

**THIS AGREEMENT** executed on the 17th day of April, 2004, between the City of San Jose and the International Union of Operating Engineers, Local No. 3, in WITNESS thereof, the appropriate representative of the parties have affixed their signature thereto.

This Memorandum of Agreement was approved by the City Council of the City of San Jose on May 4th, 2004, and ratified by the International Union of Operating Engineers, Local No. 3 on April 29, 2004.

**FOR THE CITY:**

\_\_\_\_\_/s/  
Del D. Borgsdorf  
City Manager

\_\_\_\_\_/s/  
Alex Gurza, Lead Negotiator  
Director of Employee Relations

\_\_\_\_\_/s/  
Jennifer Maguire  
Negotiation Team Member

\_\_\_\_\_/s/  
Russ Strausbaugh  
Negotiation Team Member

\_\_\_\_\_/s/  
Kevin O'Connor  
Negotiation Team Member

\_\_\_\_\_/s/  
Patrick Tonna  
Negotiation Team Member

\_\_\_\_\_/s/  
Gina Donnelly  
Negotiation Team Member

**FOR THE UNION:**

\_\_\_\_\_/s/  
John Bonilla  
Business Manager, OE#3

\_\_\_\_\_/s/  
Rob Wise  
Recording-Corresponding Secretary, OE#3

\_\_\_\_\_/s/  
Frank Herrera  
Vice President, OE#3

\_\_\_\_\_/s/  
Robert Miller  
President, OE#3

\_\_\_\_\_/s/  
Curt Benfield  
Director of Public Employee Division, OE#3

\_\_\_\_\_/s/  
Bob Highbaugh  
Business Representative, Lead Negotiator

\_\_\_\_\_/s/  
Ricardo Wolfe  
Chief Steward, Negotiation Team Member

\_\_\_\_\_/s/  
Daniel Finn  
Steward, Negotiation Team Member

\_\_\_\_\_/s/  
Tom Reilly  
Steward, Negotiation Team Member

\_\_\_\_\_/s/  
Lloyd Standridge  
Steward, Negotiation Team Member

\_\_\_\_\_/s/  
Martin Baron  
Steward, Negotiation Team Member

**"EXHIBIT I"**  
**Salary Ranges Effective April 10, 2005**

<b>Job Code</b>	<b>Descr</b>	<b>Top Step</b>	<b>Min Hourly</b>	<b>Max Hourly</b>	<b>Min Bi-weekly</b>	<b>Max Bi-weekly</b>
3162	Air Conditioning Mech	5	\$ 32.23	\$ 39.16	\$ 2,578.40	\$ 3,132.80
3246	Airport Equipment Mechanic	5	\$ 29.42	\$ 35.77	\$ 2,353.60	\$ 2,861.60
3321	Apprentice Mechanic	10	\$ 22.43	\$ 28.04	\$ 1,794.40	\$ 2,243.20
3641	Assist Hvy Dsl Eq Op Mech	5	\$ 24.26	\$ 29.51	\$ 1,940.80	\$ 2,360.80
3415	Athletic Stadium Grndskpr	5	\$ 21.59	\$ 26.23	\$ 1,727.20	\$ 2,098.40
3133	Carpenter	5	\$ 27.01	\$ 32.81	\$ 2,160.80	\$ 2,624.80
3417	Community Garden Coord	5	\$ 23.79	\$ 28.92	\$ 1,903.20	\$ 2,313.60
3182	Concrete Finisher	5	\$ 24.03	\$ 29.20	\$ 1,922.40	\$ 2,336.00
3630	Cross Connection Spec	5	\$ 23.11	\$ 28.10	\$ 1,848.80	\$ 2,248.00
5226	Environment Insp, Assistant	5	\$ 24.09	\$ 29.27	\$ 1,927.20	\$ 2,341.60
5225	Environment Inspector I	5	\$ 29.77	\$ 36.18	\$ 2,381.60	\$ 2,894.40
5224	Environment Inspector II	5	\$ 32.84	\$ 39.92	\$ 2,627.20	\$ 3,193.60
3174	Equipment Maint Machinist	5	\$ 27.28	\$ 33.18	\$ 2,182.40	\$ 2,654.40
3311	Equipment Mech Asst I	5	\$ 19.01	\$ 23.11	\$ 1,520.80	\$ 1,848.80
3312	Equipment Mech Asst II	5	\$ 20.86	\$ 25.34	\$ 1,668.80	\$ 2,027.20
3341	Equipment Operator	5	\$ 21.38	\$ 25.97	\$ 1,710.40	\$ 2,077.60
6118	Exhibit Builder PT	5	\$ 18.93	\$ 22.99	\$ 1,514.40	\$ 1,839.20
6119	Exhibit Designer/Builder	5	\$ 29.77	\$ 36.18	\$ 2,381.60	\$ 2,894.40
3238	Facility Repair Worker	5	\$ 24.25	\$ 29.47	\$ 1,940.00	\$ 2,357.60
2301	Fire Equipment Technician	5	\$ 26.61	\$ 32.36	\$ 2,128.80	\$ 2,588.80
3414	Gardener	5	\$ 21.70	\$ 26.38	\$ 1,736.00	\$ 2,110.40
3410	Groundskeeper	5	\$ 19.50	\$ 23.69	\$ 1,560.00	\$ 1,895.20
3409	Groundskeeper PT	5	\$ 19.50	\$ 23.69	\$ 1,560.00	\$ 1,895.20
3411	Groundswoker	5	\$ 19.50	\$ 23.69	\$ 1,560.00	\$ 1,895.20
3642	Heavy Diesel Equip Op/Mec	5	\$ 27.28	\$ 33.18	\$ 2,182.40	\$ 2,654.40
3343	Heavy Equip Oper	5	\$ 24.50	\$ 29.77	\$ 1,960.00	\$ 2,381.60
3108	Maintenance Assistant	6	\$ 17.16	\$ 21.90	\$ 1,372.80	\$ 1,752.00
3109	Maintenance Assistant PT	6	\$ 17.16	\$ 21.90	\$ 1,372.80	\$ 1,752.00
3113	Maintenance Worker I	5	\$ 19.50	\$ 23.69	\$ 1,560.00	\$ 1,895.20
3114	Maintenance Worker II	5	\$ 21.70	\$ 26.38	\$ 1,736.00	\$ 2,110.40
3323	Mechanic	5	\$ 26.61	\$ 32.36	\$ 2,128.80	\$ 2,588.80
1531	Mechanical Parts Assistnt	5	\$ 17.85	\$ 21.70	\$ 1,428.00	\$ 1,736.00
1532	Mechanical Parts Worker	5	\$ 19.94	\$ 24.23	\$ 1,595.20	\$ 1,938.40
3172	Metal Fabrication Mech	5	\$ 26.61	\$ 32.36	\$ 2,128.80	\$ 2,588.80
3123	Painter	5	\$ 27.01	\$ 32.81	\$ 2,160.80	\$ 2,624.80
3124	Painter WPCP	5	\$ 27.01	\$ 32.81	\$ 2,160.80	\$ 2,624.80
3412	Park Maint Repair Wkr I	5	\$ 21.70	\$ 26.38	\$ 1,736.00	\$ 2,110.40

3413	Park Maint Repair Wkr II	5	\$ 26.23	\$ 31.90	\$ 2,098.40	\$ 2,552.00
2423	Park Ranger	5	\$ 22.23	\$ 27.02	\$ 1,778.40	\$ 2,161.60
2424	Park Ranger PT	5	\$ 22.23	\$ 27.02	\$ 1,778.40	\$ 2,161.60
2421	Park Ranger Trainee PT	5	\$ 13.01	\$ 15.80	\$ 1,040.80	\$ 1,264.00
2451	Parking Control Offcr	5	\$ 18.56	\$ 22.56	\$ 1,484.80	\$ 1,804.80
2452	Parking Control Offcr PT	5	\$ 18.56	\$ 22.56	\$ 1,484.80	\$ 1,804.80
3621	Plant Attendant	5	\$ 21.18	\$ 25.75	\$ 1,694.40	\$ 2,060.00
3622	Plant Mechanic	5	\$ 27.28	\$ 33.18	\$ 2,182.40	\$ 2,654.40
3612	Plant Operator	5	\$ 27.03	\$ 32.85	\$ 2,162.40	\$ 2,628.00
3611	Plant Operator Trainee	5	\$ 20.36	\$ 24.75	\$ 1,628.80	\$ 1,980.00
3142	Plumber	5	\$ 32.23	\$ 39.16	\$ 2,578.40	\$ 3,132.80
1361	Process & Systems Spec I	5	\$ 26.23	\$ 31.90	\$ 2,098.40	\$ 2,552.00
1363	Process & Systems Spec II	5	\$ 31.90	\$ 38.77	\$ 2,552.00	\$ 3,101.60
3163	Senr Air Cond Mechanic	5	\$ 34.64	\$ 42.12	\$ 2,771.20	\$ 3,369.60
3247	Senr Airport Equip Mechanic	5	\$ 31.58	\$ 38.39	\$ 2,526.40	\$ 3,071.20
3134	Senr Carpenter	5	\$ 29.77	\$ 36.18	\$ 2,381.60	\$ 2,894.40
3239	Senr Facility Repair Wkr	5	\$ 27.29	\$ 33.18	\$ 2,183.20	\$ 2,654.40
3643	Senr Hvy Dsl Eq Oper Mech	5	\$ 29.63	\$ 36.02	\$ 2,370.40	\$ 2,881.60
3345	Senr Hvy Equipment Oper	5	\$ 26.37	\$ 32.05	\$ 2,109.60	\$ 2,564.00
3115	Senr Maintenance Worker	5	\$ 26.23	\$ 31.90	\$ 2,098.40	\$ 2,552.00
3322	Senr Mechanic	5	\$ 28.50	\$ 34.64	\$ 2,280.00	\$ 2,771.20
1533	Senr Mechanical Parts Wkr	5	\$ 22.98	\$ 27.94	\$ 1,838.40	\$ 2,235.20
3126	Senr Painter	5	\$ 29.77	\$ 36.18	\$ 2,381.60	\$ 2,894.40
2453	Senr Parking Control Off	5	\$ 24.03	\$ 29.20	\$ 1,922.40	\$ 2,336.00
3623	Senr Plant Mechanic	5	\$ 29.63	\$ 36.02	\$ 2,370.40	\$ 2,881.60
3613	Senr Plant Operator	5	\$ 30.09	\$ 36.57	\$ 2,407.20	\$ 2,925.60
3120	Senr Pump Maintenance Wkr	5	\$ 26.23	\$ 31.90	\$ 2,098.40	\$ 2,552.00
3405	Senr Tree Maint Leadworkr	5	\$ 26.23	\$ 31.90	\$ 2,098.40	\$ 2,552.00
3633	Senr Water Systems Tech	5	\$ 25.34	\$ 30.81	\$ 2,027.20	\$ 2,464.80
3125	Sign Painter	5	\$ 27.01	\$ 32.81	\$ 2,160.80	\$ 2,624.80
3342	Street Sweeper Oper	5	\$ 22.22	\$ 27.01	\$ 1,777.60	\$ 2,160.80
3416	Tree Maintenance Leadwrkr	5	\$ 23.56	\$ 28.63	\$ 1,884.80	\$ 2,290.40
3632	Water Systems Technician	5	\$ 23.91	\$ 29.08	\$ 1,912.80	\$ 2,326.40

## "EXHIBIT II"

### SUBSTANCE ABUSE PROGRAM

**Purpose.** The purpose of the Substance Abuse Program is to rehabilitate rather than punish employees who have a substance abuse problem. One of the goals of the program is to provide the means for early detection and resolution of drug or alcohol problems an employee may be having.

This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees. It is the policy of the City of San Jose to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San Jose.

#### **Application.**

- A. **Personnel.** Full-time and permanent, benefited part-time employees represented by:  
**Operating Engineers, Local #3.**
- B. **Substances.**
  - 1. alcohol;
  - 2. illegal drugs; and
  - 3. prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

**Policy.** It is the policy of the City that employees:

- 1. shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;
- 2. while on duty shall not use, possess, sell or provide drugs or alcohol;
- 3. shall not have their ability to work or be paid stand-by impaired as a result of the use of alcohol or drugs.

An employee is required to notify their supervisor when any medications or drugs they are taking could create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties when using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.

The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Department of Human Resources for additional information.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until an authorized department representative can transport the employee from the worksite to home or an appropriate medical facility.

Violations of this policy shall be grounds for disciplinary action, up to and including discharge for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis when requested by management will constitute insubordination, which alone will form a basis for discipline.

**Employee Responsibilities.** An employee must:

- A. not report to work while their ability to perform job duties is impaired due to alcohol or drug use;
- B. not possess or use, or have the odor of alcohol or drugs on their breath during working hours, or while operating any City vehicle or equipment;
- C. not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;
- D. submit immediately to reasonable requests for alcohol and/or drugs analysis when requested by an authorized representative of a department head and may request union representation;
- E. notify their supervisor, before operating City equipment, when taking any medications or drugs, prescription or non-prescription, which may create an unsafe or dangerous situation for the public or the employee's co-workers, including but not limited to valium, muscle relaxants, and painkillers, and
- F. provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

**Management Responsibilities and Guidelines.**

- A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits a violation of this policy by employees under their direct supervision shall be subject to disciplinary action.
- B. A Department Head or authorized representative may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform their job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

1. A pattern of documented abnormal or erratic behavior;
  2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and the Union;
  3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
  4. A work related accident in conjunction with other facts which together support reasonable cause.
- C. Any manager or supervisor should immediately notify another supervisor to meet with them to observe the employee's behavior prior to directing an employee to submit to a drug and/or alcohol analysis. If the employee requests union representation, the employee will be allowed the opportunity to secure such representation. The process for directing an employee to submit to a drug and/or alcohol test is outlined below in number 1-7.

Additionally, if an employee believes an employee not under their supervision has a problem and should be tested or referred, the employee should contact the **Employee Assistance Program (EAP)** who will notify the Department Director or designee. Should the Department Director or designee, concur the employee appears to be in violation of the policy, the following procedure shall immediately be applied:

1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Health Services or emergency room where a drug and/or alcohol test will be requested.
3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon direction shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.
4. Managers and supervisors shall not physically search employees.
5. Managers and supervisors shall notify the Police Department when they have reasonable suspicion to believe that an employee may have illegal drugs in their possession.
6. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
7. The employee will be informed of the requirement that they undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.

- D. A manager or supervisor may require an employee to attend an initial screening session with the **Employee Assistance Program (EAP)** as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.
- E. Demands for drug or alcohol analysis by supervisors or managers, which are determined to be malicious or vexatious will not be tolerated and will subject the directing individual to disciplinary action.
- F. Results of Drug and/or Alcohol Analysis:
1. Upon a negative result, the employee shall return to work if otherwise fit for duty. All records and documentation shall be purged.
  2. If the test result is positive, the following shall apply:

**First Offense:** The first violation of this policy will result in a formal, mandatory referral to the **Employee Assistance Program (EAP)**, using the established referral procedures. A written record of this referral will be maintained in a restricted confidential employee medical file. **EAP** will assess the employee's need for treatment. An employee declining to be evaluated by **EAP** may be subject to disciplinary action independent of any other misconduct. Treatment will be offered to the employee on a voluntary basis and the employee will be responsible for thirty percent of the treatment cost. No disciplinary action will be imposed for refusal of treatment; however, misconduct will continue to be subject to discipline.

3. **Second Offense:** During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second positive test itself, independent of other misconduct, subject to due process for City employees. If a second treatment program is allowed the employee will be responsible for the cost.
4. The employee may request a split sample be tested at another facility at City expense to provide a second independent result.

**Confidentiality.** Laboratory reports or test results, if positive only, shall appear in an employee's confidential medical file. The reports or test results may be disclosed to a Department Director or designee, and the Employee Services Director or designee, on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed at issue in a formal dispute between the employer and employee; (2) the information is to be used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

**Procedure: Drug Testing.** Attachment A contains procedures for handling testing for drugs if the test is conducted by the City's Employee Health Services

during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial test if the amount exceeds the minimum detection levels defined in Attachment A, H.17, and in the confirming test above the criteria in Section H.19.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.05g.

**Substance Abuse Treatment.** The City will make substance abuse treatment available to employees represented by the Operating Engineers', Local #3 in the following way:

1. Self Referral

- A. If an employee believes they have a substance abuse problem, the employee may make a confidential appointment with a counselor at **EAP**.
- B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The **EAP** will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.
- C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.

2. Formal Referrals

- A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the **EAP** and define issues.
- B. The employee will be advised to go to the **EAP** for evaluation. Any participation in treatment is voluntary.
- C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.

3. Positive Drug Test

- A. If an employee tests positive on a drug test, the Department Director or designee, will contact the **EAP** and initiate a formal referral. An evaluation by the **EAP** is mandatory. Participation in treatment is voluntary.
- B. The employee will sign a release allowing the **EAP** to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.

4. Settlement of a Proposed Discipline

- A. If an employee has received an Notice of Intended Discipline for misconduct or job performance, either on or off the job, which has a substance abuse component, the

City may agree to waive the discipline, if the employee will agree to and successfully comply with a treatment program.

- B. The specific terms of the agreement are determined on a case-by-case basis including requiring the employee to submit to follow-up random drug and/or alcohol testing for a specified period of time. The intent, however, is not to relieve the employee of responsibility for their actions. It is to encourage maximum access to rehabilitation. The goal of this program is to rehabilitate rather than punish employees.
5. Funding. The employee will pay 30% of treatment costs for a plan approved by the **EAP** for the employee. The city will pay the remainder of the cost which is not covered by the employee's health insurance for one treatment.

**City of San José  
Substance Abuse Policy  
Operating Engineer's, Local #3**

**SCOPE OF SERVICES**

1. Provide gatekeeping and case management chemical dependency problems of employees represented by the **Operating Engineer's, Local #3**. This service is to include assessment, referral to high quality treatment facilities, pre-certification, and post treatment case management.
2. Provide orientation to the services provided via programs coordinated through the City Training Program.

**COMPONENTS**

1. Assessment. Covered employees may be self-referred to **Employee Assistant Program (EAP)** or referred by a supervisor from the City of San José. **EAP** will provide a clinical assessment for the most appropriate level of treatment. (see Tracks A, B, C). Treatment options include:

Structured Inpatient Program. Inpatient facilities are licensed by the California Department of Health Services under two ratings:

- CDRH: Chemical Dependency Recovery Hospital located in an acute-care hospital.
- CDRS: Chemical Dependency Recovery Service which is a free-standing residential facility.

Inpatient treatment may be required when a client has a lengthy history of abuse, is in an advanced stage dependency, has significant associated medical problems, or has little family support. This program would include a detoxification waiting period.

Structured Outpatient Program. Outpatient facilities are not currently licensed. This treatment may be appropriate when a client is in the early or middle stages of dependency, is not resistant to treatment, and has family support.

Alcoholics Anonymous and Alanon. When chemical dependency is in an early stage, intensive participation in AA or related affiliates in conjunction with supportive counseling at **EAP** may be appropriate. This approach has proven successful when a client is very strongly motivated to recover and has the support of the family.

2. Referral. Criteria have been developed at **EAP** to assist counselors in making a referral to the most appropriate level of treatment. Counselors are required to document referrals based on this criteria. The Clinical Coordinator reviews all alcohol/drug cases referred to treatment to ensure that the most cost effective recommendations are made. Referrals are made to quality programs to ensure the best chance of success.

3. Pre-certification. Provide required pre-certification for coverage for all chemical dependency treatment. All covered employees requesting treatment should be directed to **EAP** prior to contacting a treatment facility. **EAP** will evaluate and refer the employee to a recommended facility and notify the City of San José of the referral for billing purposes. Should an emergency or a self-admission be initiated, **EAP** will evaluate the employee within 48 hours and make a recommendation for continued treatment, and notify the City of San José Employee Services/Benefits Division. The section on Gatekeeping Procedures outlines the steps **EAP** will take in this process.
4. Case Management. **EAP** counselors will coordinate the chemical dependency treatment of employees from initiation of treatment for up to one year after treatment. This is a critical component of recovery because treatment programs have little investment in clients once they have left their program. Quality case management can reduce the high risk of relapse and assist employees who have relapsed to resume the recovery process. Case management involves the following activities on the part of **EAP**.
  - Act as liaison with the treatment program team and City of San José to monitor progress and facilitate the return to work.
  - Participate in the development of a recovery plan with the client, the family and the treatment team.
  - Continued counseling with client and family as necessary after discharge from treatment facility for one year.
  - Should a relapse occur, provide crisis intervention and assistance in developing a stronger recovery plan to increase the involvement of employer, family, after-care team, etc.
  - Provide relapse prevention education and therapy groups as appropriate.
5. Treatment Program. Treatment Program is considered to have the following components:
  - Inpatient or outpatient treatment, or a combination of both
  - Treatment aftercare program
  - **EAP** case management for up to one year following treatment.

A treatment program is considered ended when all three of the above have been completed or when an employee terminates participation in any of the components.

Treatment will be covered if it is provided by one of **EAP's** recommended facilities. If these facilities are not used, coverage will be limited to that normally covered under the employee's medical benefits plan.
6. Tracks. There are three sets of procedures (tracks) for initiating chemical dependency treatment:

#### **TRACK A: Assessment at EAP and Referral to Treatment facility**

- A. Client is assessed at **EAP** with a chemical dependency problem requiring treatment. If the counselor is clear that outpatient or inpatient is required, the client may be sent directly to the recommended treatment facility and Step B would be initiated.

If the counselor desires, the client may be sent for additional assessment at a treatment facility. An outpatient assessment counselor may be utilized in these cases, especially if the client falls in a "gray area" regarding type of necessary treatment.

- B. Counselor obtains a release of information to authorize report of participation to the City of San José Employee Services/Benefits Division.
- C. Treatment program is contacted by telephone to notify them that the client is coming and that:
1. Treatment is pre-authorized for a specific number of days and the authorization form is mailed to them.
  2. The program should contact City of San José Employee Services/Benefits Division to confirm eligibility.
- D. Counselor fills out the pre-authorization form within one working day of admission and sends it to:
- a. Treatment facility
  - b. City of San José Employee Services/Benefits Division
  - c. Client (at home address)
- E. Counselor interaction with treatment program during treatment will be as follows:
- Outpatient: Telephone contact weekly for the duration of treatment. If necessary, schedule a meeting with the client and treatment counselor for post-treatment planning.
  - Inpatient: Meet with staff during the first fifteen (15) days of authorized treatment to determine the subsequent treatment course. Ask them to justify inpatient treatment beyond the fifteen (15) authorized days. Generally speaking, we will want to follow the recommendations of the program.
  - Keep in contact on a weekly basis via telephone or letter.
  - Attend discharge planning meeting at facility, and set-up first after-care appointment. Request that staff remind client to contact **EAP** therapist for appointment and that there are resources available to the employee via the union or the **EAP**.
- F. Provide authorization for alterations or extension of treatment as necessary.
- G. Continue contact a minimum of once a month for the first six (6) months. Monitor the client's progress and participation in aftercare. (**EAP** will verify that the facility has obtained a release of information from the client.) Identify indicators of potential relapse and refer to prevention group if appropriate. Make referrals for additional necessary services; i.e., family counseling, adult and child support groups, etc.
- H. The treatment program will be considered terminated when the client has successfully completed treatment, aftercare, and **EAP** case management, or:
- a. If the client fails to attend aftercare.  
No more than two (2) unexcused absences.  
Reasons for non-attendance must be cleared through **EAP** therapist.
  - b. Failure to attend follow-up counseling with **EAP** as agreed upon with their counselor.

- I. Notify City of San José Employee Services/Employee Benefits and the client, in writing, when the "treatment program" is terminated or completed.

#### **TRACK B: Emergency Admission to Treatment Facility**

- A. Employee presents to a treatment facility. Facility calls City of San José Employee Services/Employee Benefits to determine eligibility and coverage.
- B. City of San José Human Resources/Employee Benefits will confirm eligibility and notify the facility that authorization is required through **EAP** beyond the initial 48-hour period of coverage.
- C. **EAP** will visit the treatment facility and assist the client within the 48 hours.
- D. If it is determined the client needs inpatient treatment, and
- the treatment facility is an **EAP** recommended facility, authorization will be given as outlined in Track A.
  - the treatment facility is not an **EAP** recommended facility, **EAP** will facilitate a transfer to a recommended facility.
- E. If outpatient treatment is recommended and client agrees with the treatment course, **EAP** will facilitate the referral and authorize as indicated in Track A.

#### **TRACK C: Second Treatment**

- A. Eligible employees who have relapsed following an initial treatment would not be authorized for a second treatment without assessment by **EAP**. The procedures would be the same as for Track A or Track B, and approval would be based on professional judgment.

#### **RECOMMENDED TREATMENT PROGRAM**

Programs are evaluated on the basis of:

- Skill and experience of the staff
- Intensity of treatment model
- Use of group and family therapy
- Inclusion of a strong education component
- Availability of a well-structured aftercare program
- Involvement of the family in all phases of the program

Referrals to specific programs are made on the basis of:

- 1) quality of program to meet the needs of the employee
- 2) location in relation to employee, and
- 3) cost

**EAP** will assist in the negotiation of preferred provider rates at the City's request.

The City of San Jose will provide a head count of all covered employees to **EAP** each month. **EAP** will bill the City of San Jose each month the contracted rate per covered employee for all gatekeeping services. The City of San Jose will be responsible for the cost of all recommended treatment services for covered employees.